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Court of Appeals

OF THE STATE OF NEW YORK.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners trading under the name of THE WORLD CAFETERIA,

Plaintiffs-Respondents,

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants-Appellants.

No. 3048
1939

Statement Under Rule 234.

This action was commenced by the service of the summons and complaint on defendant on May 3, 1939. Issue was joined by the service of defendant's answer on May 19, 1939.

Plaintiffs appeared by David L. Delman. Defendant appeared by Boudin, Cohn & Glickstein.

The full names of the parties appear above. There has been no change of parties or of attorneys herein.

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Notice of Appeal to Appellate Division.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF THE BRONX.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners trading under the name of THE WORLD CAFETERIA,

5 Plaintiffs,

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

Sir:

PLEASE TAKE NOTICE that the defendants herein hereby appeal to the Appellate Division of the 6 Supreme Court, First Department, from the final judgment herein, dated the 19th day of June, 1939, and entered in the office of the Clerk of the County of the Bronx on the 20th day of September, 1939, enjoining and restraining the defendants from picketing the plaintiffs' place of business, and that

this appeal is taken from the whole of said judgment and from each and every part thereof.

Dated, New York, September 21, 1939.

Yours, etc.,

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants,
Office and Post Office Address,
20 West 43rd Street,
Borough of Manhattan,
City of New York.

8

To:

DAVID L. DELMAN, Esq.,
Attorney for Plaintiffs,
261 Broadway,
New York City.

9

10

Summons.

SUPREME COURT
OF THE STATE OF NEW YORK,
COUNTY OF BRONX.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners trading under the name of THE WORLD CAFETERIA,

Plaintiffs,

against

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WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

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Dated, New York, May 3, 1939.

DAVID L. DELMAN,
Attorney for Plaintiffs,
Office and Post Office Address,
261 Broadway,
Borough of Manhattan.

Complaint.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

Plaintiffs, complaining of the defendants, by David L. Dehman, their attorney, respectfully allege:

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President.

SECOND: That the plaintiffs are partners and owners of the cafeteria known as The World Cafeteria, located at 838 East 180th Street, Borough of Bronx, City of New York.

THIRD: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that those pickets were previously employed by the plaintiffs.

FOURTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

FIFTH: That there is no "labor dispute" between the plaintiffs and any employees, and no

employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

SIXTH: That the plaintiffs are the sole owners of The World Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

SEVENTH: That no strike has ever been called at the plaintiffs' place of business.

EIGHTH: That the plaintiffs, as a result of the unlawful practices of the defendants, have suf-
17 fered, suffer and will suffer irreparable damage, and they may find their business ruined without any adequate remedy at law, and must, therefore, seek this equitable relief in order to prevent the defendants from continuing their unlawful practices.

WHEREFORE, plaintiffs demand judgment against the defendants:

(a) That the defendants and their agents, servants and employees and those acting under their direction or control, be enjoined permanently and during the pendency of this action from stationing any pickets at or near
18 the plaintiffs' place of business as above described, and from interfering with the plaintiffs' customers who may seek to enter the plaintiffs' place of business or prevent by coercion or in any wise, any customers of the plaintiffs seeking to enter plaintiffs' place of business, or from interfering in any wise with the plaintiffs' business.

(b) That the defendants pay to the plaintiffs such damages as shall be proven at the trial or as to this Court may seem fair and adequate.

(c) That the plaintiffs have such other and further and different relief as to the Court may seem proper, together with the costs and disbursements of this action.

DAVID L. DELMAN,
Attorney for Plaintiffs,
Office & P. O. Address,
261 Broadway, 20
Borough of Manhattan,
City of New York.

(Verified May 3, 1939.)

Answer.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.] 21

The defendant William Mesevich, answering the complaint of the plaintiffs herein, by his attorneys, Boudin, Cohn & Glickstein, respectfully shows to this Honorable Court and alleges:

I. He denies each and every allegation contained in the paragraph or section of the said complaint marked or numbered "Second".

II. He denies each and every allegation contained in the paragraph or section of the said complaint marked or numbered "Third", except that he admits that the defendant union has been peacefully and lawfully picketing the cafeteria known as the World Cafeteria.

III. He denies each and every allegation contained in the paragraphs or sections of the said complaint marked or numbered "Fourth", "Fifth", "Sixth", and "Eighth".

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A FIRST SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

IV. That the enterprise conducted and carried on under the name of World Cafeteria is the result of an arrangement, scheme, plan, design, and conspiracy on the part of the plaintiffs, and particularly on the part of the plaintiff Demosthenes Loizides to circumvent the laws of the State of New York by creating a fictitious partnership for the purpose of representing that he employs no help and thereby to gain immunity from the statutes of the State of New York with respect to labor and social legislation, and further, to avoid an employer's financial responsibility as required by the laws of the State of New York, particularly those laws dealing with labor, workmen's compensation and unemployment insurance.

V. That the plaintiffs herein are not actually copartners but that the enterprise known as the World Cafeteria is owned, operated and controlled by the plaintiff Demosthenes Loizides.

VI. That by reason thereof, the plaintiffs have and are attempting to perpetrate a fraud, and have come into a court of equity with unclean hands and are consequently entitled to no relief.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A SECOND, SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

VII. That an actual controversy and labor dispute exists between the plaintiff Demosthenes Loizides and the defendant union, and that such controversy and labor dispute is concerned with, among other things, the question of social and economic conditions in the restaurant industry in the City of New York, including standards of employment and working conditions.

VIII. That as the result of a concealed relationship of employer and employee existing between and among the plaintiffs, and as a result of the failure on the part of the plaintiff Demosthenes Loizides to comply with the statutes of the State of New York with respect to employment of labor, and as a result of the fraudulent plans, scheme and design of the plaintiffs, said plaintiffs are enabled to unfairly compete with enterprises of a similar kind and nature and to undermine conditions of labor regulated by the statutes of the State of New York and social and economic conditions and to thereby create chaos and unemployment in the restaurant industry.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A THIRD, SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

IX. That the dispute between the plaintiffs and the defendant is concerned with the terms and con-

ditions of employment and concerns the association or representation of persons in fixing, negotiating, maintaining, changing, or seeking to arrange terms or conditions of employment and concerns employment relations.

X. That by reason thereof the within action involves a labor dispute within Section 876-a of the Civil Practice Act.

XI. That the complaint herein fails to comply with said Section 876-a of the Civil Practice Act and by reason thereof is insufficient and should be dismissed.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A FOURTH, SEPARATE AND COMPLETE DEFENSE THERETO, SAID DEFENDANT ALLEGES:

XII. That the plaintiffs herein have not sought or in fact negotiated for the settlement of the labor dispute herein in good faith and have made no bona fide efforts to effect such settlement, and in fact have not made every reasonable effort to settle the dispute either by negotiation or with the aid of any machinery or mediation provided for by law.

WHEREFORE, said defendant demands judgment herein dismissing the complaint, together with the costs and disbursements of this action.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant William Mesevich,
Office & P. O. Address,
20 West 43nd Street,
Borough of Manhattan,
City of New York.

(Verified May 18, 1939.)

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Plaintiffs' Proposed Findings.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the Bronx, on the 14th day of June, 1939, and the plaintiffs having appeared by David L. Delman, 32
Esq., their attorney, and the defendants having appeared by Boudin, Cohn & Glickstein, Esqs. (Irving R. Feinberg, of counsel) and the evidence of both sides having been adduced, and due deliberation having been had thereon, and after hearing David L. Delman, Esq., attorney for the plaintiffs, and Boudin, Cohn & Glickstein, Esqs., attorneys for the defendants, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the 33
defendant William Mesevich is its President.

Found—T. A. L., J. S. C.

SECOND: That the plaintiffs are partners and owners of the cafeteria known as the World Cafeteria, located at 838 East 180th Street, Borough of Bronx, City of New York.

Found—T. A. L., J. S. C.

34 *Plaintiffs' Proposed Findings.*

THIRD: That the partnership formed by the plaintiffs is a valid partnership.

Found—T. A. L., J. S. C.

FOURTH: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs. Said picketing began on or about
35 April 14, 1939.

Found—T. A. L., J. S. C.

FIFTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

Found—T. A. L., J. S. C.

SIXTH: That there is no "labor dispute" between the plaintiffs and any employees, or between the plaintiffs and the defendants, within the purview of Section 876-a of the Civil Practice
36 Act, and no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

Found—T. A. L., J. S. C.

SEVENTH: That the plaintiffs are the sole owners of The World Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

Found—T. A. L., J. S. C.

EIGHTH: That no strike has ever been called at the plaintiffs' place of business.

Found—T. A. L., J. S. C.

NINTH: That the plaintiffs, as a result of the unlawful practices of the defendants, and the individuals under their control, have suffered damage, and unless the defendants are restrained from continuing their unlawful practices, the plaintiffs would suffer irreparable damage and may find their business ruined without any adequate remedy at law.

Found—T. A. L., J. S. C. 38

TENTH: That the pickets in front of plaintiffs' place of business approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food, and that by patronizing said plaintiffs' restaurant they were aiding the cause of Fascism.

Found—T. A. L., J. S. C.

ELEVENTH: That the said pickets directed customers about to enter the plaintiffs' place of business to a cafeteria across the street, a competitor of the plaintiffs.

Found—T. A. L., J. S. C. 39

TWELFTH: That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.

Found—T. A. L., J. S. C.

THIRTEENTH: That a certificate doing business as The World Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx.

Found—T. A. L., J. S. C.

CONCLUSIONS OF LAW.

1. That the plaintiffs are entitled to a permanent injunction, restraining and enjoining the defendants and their agents, servants and employees and those acting under their direction or control, from stationing any pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

Found—T. A. L., J. S. C.

2. That the plaintiffs are entitled to the costs and legal disbursements of this action.

Refused—T. A. L., J. S. C.

3. Let a judgment be entered accordingly.

Found—T. A. L., J. S. C.

Dated, New York, June , 1939.

J. S. C.

43

Defendant's Proposed Findings.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of Bronx, on the 14th day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., their 44
attorney, and the defendant having appeared by Boudin, Cohn & Glickstein, Esqs., his attorneys (Irving R. Feinberg of counsel), and the evidence of both sides having been adduced, and due deliberation having been had thereon, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, consisting of a labor union and is affiliated with the American Federation of Labor, and the defendant William Mesevich is the president 45
thereof.

Found—T. A. L., J. S. C.

SECOND: That the Cafeteria Employees Union, Local 302, is composed of and has jurisdiction over men and women employed in the cafeteria industry in the City of New York.

Found—T. A. L., J. S. C.

46 *Defendant's Proposed Findings.*

THIRD: That for some time during the year 1933 until February 11, 1939, the plaintiff Demosthenes Loizides owned and operated a cafeteria at 838 East 180th Street, in the Borough of Bronx, City of New York, under the name of the World Cafeteria; that all of the remaining plaintiffs were during said period employed in said cafeteria by the said Demosthenes Loizides.

Refused—T. A. L., J. S. C.

FOURTH: That the World Cafeteria was closed on or about February 11, 1939, for alterations and
47 was reopened on or about April 14, 1939; that upon the reopening, all of the former employees in said cafeteria, being the plaintiffs in this action, continued to be employed in the cafeteria in the capacity of workers, and that the plaintiff Demosthenes Loizides continued to be the sole owner and operator thereof.

Refused—T. A. L., J. S. C.

FIFTH: That prior to the reopening of said World Cafeteria on or about the 14th day of April, 1939, the plaintiff Demosthenes Loizides was approached by a representative of the Cafeteria Employees Union, Local 302, and requested to em-
48 ploy union help; that Demosthenes Loizides refused to discuss the question of employing union help with the representative of the union, and refused to deal or negotiate with the union.

Refused—T. A. L., J. S. C.

SIXTH: That on or about the 15th day of April, 1939, a picket line was established by the Cafeteria Employees Union, Local 302, in front of the

World Cafeteria; and that said picket line consisted of a member of the union, walking to and fro in front of said cafeteria, bearing a sign upon which it was stated that the World Cafeteria was unfair to union labor, in that it refused to employ members of the Cafeteria Employees Union, Local 302.

Found—T. A. L., J. S. C.

SEVENTH: That at no time did more than one person picket in front of the World Cafeteria at any time.

Found—T. A. L., J. S. C. 50

EIGHTH: That the picketing of the World Cafeteria was at all times orderly and peaceful.

Found—T. A. L., J. S. C.

NINTH: That the statement on the sign carried by the picket, and the statements made by the picket have at all times been true.

Refused—T. A. L., J. S. C.

TENTH: That no acts of violence have been threatened or committed by the defendant union.

Found—T. A. L., J. S. C. 51

ELEVENTH: That the plaintiff Gus Angelos performed the duties of a chef in said cafeteria at the time of its reopening and continued to do so to the date of trial; that the plaintiff John Harris performed the duties of night manager, counterman and dishwasher in said World Cafeteria at the time of its reopening and continued to do so to the date of trial; that the plaintiff Lucas Harris

52 *Defendant's Proposed Findings.*

performed the duties of counterman in said cafeteria on the date of its reopening and continued to do so to the date of trial; that the plaintiff Nick Fellougis performed the duties of night kitchenman, dishwasher and counterman in said cafeteria on the date of its reopening and continued to do so until the date of trial; that the plaintiff Harry Galatis performed the duties of dishwasher and counterman in the said cafeteria on the date of its reopening and continued to do so to the date of trial; that the plaintiff Mary Waal performed the duties of waitress in said cafeteria
53 upon the date of its reopening and continued to do so to the date of trial.

Refused—T. A. L., J. S. C.

TWELFTH: That the plaintiff Demosthenes Loizides at all times from the date of the reopening of the cafeteria to the present date performed and still continues to perform the duties of manager of said cafeteria, does all of the buying thereof, fixes the prices to be charged for the merchandise, and is otherwise in control of the operations of said cafeteria.

Refused—T. A. L.; J. S. C.

54 THIRTEENTH: That on or about the 22nd day of April, 1939, the plaintiff Demosthenes Loizides and the remaining plaintiffs herein, being the employees in the World Cafeteria entered into and executed a fictitious agreement, wherein they purported to form a copartnership arrangement among themselves.

Refused—T. A. L., J. S. C.

55

FOURTEENTH: That said arrangement among the plaintiffs was the result of a scheme and conspiracy on the part of the plaintiff Demosthenes Loizides to circumvent the laws of the State of New York for the purpose of representing that he employs no help, and thereby to gain immunity from the laws of the State of New York with respect to labor and social legislation and with respect to workmen's compensation and unemployment insurance.

Refused—T. A. L., J. S. C.

FIFTEENTH: That the plaintiffs are not actually copartners; that the relationship of employer and employee exists among the plaintiffs. 56

Refused—T. A. L., J. S. C.

SIXTEENTH: That said fictitious arrangement among the plaintiffs was entered into solely for the purpose of avoiding the unionization of the World Cafeteria and of applying to this Court for an injunction restraining the defendant union from picketing said cafeteria.

Refused—T. A. L., J. S. C.

SEVENTEENTH: That the plaintiffs herein, with the exception of the plaintiff Demosthenes Loizides, have obtained no permit from the Board of Health of the City of New York, permitting them to conduct and operate a restaurant or cafeteria, but that the only permit obtained from the Board of Health was that obtained by the plaintiff Demosthenes Loizides prior to April 15, 1939, and that said permit has not been assigned by said plaintiff to the remaining plaintiffs. 57

Refused—T. A. L., J. S. C.

58 *Defendant's Proposed Findings.*

EIGHTEENTH: That all of the fixtures and property of the World Cafeteria are owned by and remain in the name of the plaintiff Demosthenes Loizides; that the title to these fixtures has not been assigned to the remaining plaintiffs, nor any attempt made to do so.

Refused—T. A. L., J. S. C.

NINETEENTH: That the plaintiffs John Harris and Lucas Harris are related to the plaintiff Demosthenes Loizides.

Refused—T. A. L., J. S. C.

59

TWENTIETH: That upon the execution of said fictitious arrangement no money was invested in the business of the World Cafeteria by any of the plaintiffs, and that the only money or property invested in said business was that invested originally by the plaintiff Demosthenes Loizides prior to April 15, 1939.

Refused—T. A. L., J. S. C.

TWENTY-FIRST: That upon the execution of said fictitious arrangement no sums of money were paid to the plaintiff Demosthenes Loizides by the remaining plaintiffs.

60

Refused—T. A. L., J. S. C.

TWENTY-SECOND: That after the execution of said fictitious arrangement the plaintiffs herein continued to perform the same functions and duties in the World Cafeteria which they had previously performed.

Refused—T. A. L., J. S. C.

TWENTY-THIRD: That after the execution of the fictitious arrangement among the plaintiffs, the plaintiffs continued to receive weekly from the World Cafeteria the identical sums of money which they had previously received weekly prior to April 22, 1939.

Refused—T. A. L., J. S. C.

TWENTY-FOURTH: That on or about and after April 22, 1939, no new bank account was opened by the World Cafeteria, and that the checks for said business continued to be signed by the plaintiff Demosthenes Loizides, that none of the remaining plaintiffs herein, with the exception of the plaintiff Lucas Harris who is a relative of the plaintiff Demosthenes Loizides, are authorized to sign checks on behalf of the World Cafeteria. 62

Refused—T. A. L., J. S. C.

TWENTY-FIFTH: That the plaintiffs herein carry no workmen's compensation insurance.

Found—T. A. L., J. S. C.

TWENTY-SIXTH: That the plaintiffs herein pay no social security taxes.

Found—T. A. L., J. S. C. 63

TWENTY-SEVENTH: That the plaintiffs herein pay no unemployment insurance taxes.

Found—T. A. L., J. S. C.

TWENTY-EIGHTH: That all of the plaintiffs herein are members of the Greek race.

Refused—T. A. L., J. S. C.

64 *Defendant's Proposed Findings.*

TWENTY-NINTH: That the public officers charged with the duty to protect the property of the plaintiffs and of the World Cafeteria have been able to furnish adequate protection to said property.

Refused—T. A. L., J. S. C.

THIRTIETH: That the lease for the premises occupied by the World Cafeteria is in the name of the plaintiff Demosthenes Loizides, and no attempt has been made by said plaintiff to assign said lease to any of the remaining plaintiffs herein.

65 *Refused—T. A. L., J. S. C.*

THIRTY-FIRST: That none of the fire insurance policies covering the premises known as the World Cafeteria are in the names of any of the plaintiffs herein, with the exception of the plaintiff Demosthenes Loizides.

Found—T. A. L., J. S. C.

THIRTY-SECOND: That on or about the 26th day of October, 1936, a trade name certificate was filed by the plaintiff Demosthenes Loizides in the office of the Clerk of the County of Bronx, of the City of New York, to do business under the name of the 66 World Cafeteria, and that no notice of cancellation of said certificate has been filed to date, and that said certificate remains on file and in full force and effect.

Refused—T. A. L., J. S. C.

THIRTY-THIRD: That the picket on the picket line in front of the World Cafeteria requested the public not to patronize said cafeteria since it was

unfair to union labor, and made no other statements or representations.

Found—T. A. L., J. S. C.

THIRTY-FOURTH: The plaintiffs herein have refused to discuss this dispute with the defendant union and have refused to discuss with the union the maintenance of union conditions of employment in the World Cafeteria.

Refused—T. A. L., J. S. C.

THIRTY-FIFTH: That the plaintiffs have made no reasonable efforts to settle the dispute with the defendants either by negotiation or with the aid of the machinery of mediation and voluntary arbitration provided for by law. 68

Refused—T. A. L., J. S. C.

THIRTY-SIXTH: That no unlawful acts or any breach of a contract, not contrary to public policy, have been threatened or committed, and no such acts or breach will be executed if not restrained.

Refused—T. A. L., J. S. C.

THIRTY-SEVENTH: That no substantial and irreparable injury to the plaintiffs' property will follow if the relief requested is not granted. 69

Refused—T. A. L., J. S. C.

THIRTY-EIGHTH: That greater injury will be inflicted upon the defendants by the granting of the relief requested than will be inflicted upon the plaintiffs by the denial thereof.

Refused—T. A. L., J. S. C.

70 *Defendant's Proposed Findings.*

THIRTY-NINTH: That the dispute herein concerns terms and conditions of employment, as well as the association or representation of persons in fixing, maintaining, changing or seeking to arrange terms or conditions of employment, and concerns employment relations.

Refused—T. A. L., J. S. C.

FORTIETH: That the dispute herein arises out of the respective interests of employer and employee.

Refused—T. A. L., J. S. C.

71 FORTY-FIRST: That the plaintiffs herein are attempting to perpetrate a fraud.

Refused—T. A. L., J. S. C.

CONCLUSIONS OF LAW.

1. That the dispute between the plaintiffs and the defendants is a labor dispute within the meaning of Section 876-a of the Civil Practice Act.

Refused—T. A. L., J. S. C.

2. That the picketing conducted by the defendant union is lawful as an incident of a labor dispute between the plaintiffs and the defendant, and
72 is carried on for the purpose of raising labor standards in the cafeteria industry and in the City of New York, and of installing in the place of business conducted by the plaintiff Demosthenes Loizides union standards and conditions of work.

Refused—T. A. L., J. S. C.

Defendant's Proposed Findings. 73

3. That the defendant is entitled to an order dismissing the complaint herein with costs.

Refused—T. A. L., J. S. C.

4. I hereby direct that judgment be entered accordingly.

Refused—T. A. L., J. S. C.

Dated, New York, June , 1939.

Justice of the Supreme Court
of the State of New York. 74

Decision.

SUPREME COURT

OF THE STATE OF NEW YORK.

County of Bronx.

[Same Title.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the Bronx, on the 14th day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., their attorney, and the defendants having appeared by Boudin, Cohn & Glickstein, Esqs. (Irving B. Feinberg, of counsel), and the evidence of both sides having been adduced, and due deliberation having been had thereon, and after hear- 75

ing David L. Delman, Esq., attorney for the plaintiffs, and Boudin, Cohn & Glickstein, Esqs., attorneys for the defendants, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President.

77 SECOND: That the plaintiffs are partners and owners of the cafeteria known as The World Cafeteria, located at 838 East 180th Street, Borough of Bronx, City of New York.

THIRD: That the partnership formed by the plaintiffs is a valid partnership.

FOURTH: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public
78 that these pickets were previously employed by the plaintiffs. Said picketing began on or about April 14, 1939.

FIFTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

SIXTH: That there is no "labor dispute" between the plaintiffs and any employees, or between

the plaintiffs and the defendants, within the purview of Section 876-a of the Civil Practice Act, and no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs. 79

SEVENTH: That the plaintiffs are the sole owners of The World Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

EIGHTH: That no strike has ever been called at the plaintiffs' place of business. 80

NINTH: That the plaintiffs, as a result of the unlawful practices of the defendants, and the individuals under their control, have suffered damage, and unless the defendants are restrained from continuing their unlawful practices, the plaintiffs would suffer irreparable damage and may find their business ruined without any adequate remedy at law.

TENTH: That the pickets in front of plaintiffs' place of business approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food and that by patronizing said plaintiffs' restaurant they were aiding the cause of Fascism. 81

ELEVENTH: That the said pickets directed customers about to enter the plaintiffs' place of business to a cafeteria across the street, a competitor of the plaintiffs.

TWELFTH: That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.

THIRTEENTH: That a certificate doing business as The World Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx.

FOURTEENTH: That the Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, consisting of a labor union and is affiliated with the American Federation of Labor, and the defendant William Mesevich is the president thereof.

83 FIFTEENTH: That the Cafeteria Employees Union, Local 302, is composed of and has jurisdiction over men and women employed in the cafeteria industry in the City of New York.

SIXTEENTH: That on or about the 15th day of April, 1939, a picket line was established by the Cafeteria Employees Union, Local 302, in front of the World Cafeteria; and that said picket line consisted of a member of the union, walking to and fro in front of said cafeteria, bearing a sign upon which it was stated that The World Cafeteria was unfair to union labor, in that it refused to employ members of the Cafeteria Employees Union, Local 302.

84 SEVENTEENTH: That at no time did more than one person picket in front of The World Cafeteria at any time.

SEVENTEENTH A—That none of the fire insurance policies covering the premises known as The World Cafeteria are in the names of any of the plaintiffs herein with the exception of the plaintiff Demosthenes Loizides.

EIGHTEENTH: That the picketing of The World Cafeteria was at all times orderly and peaceful.

NINETEENTH: That no acts of violence have been threatened or committed by the defendant union.

TWENTIETH: That the plaintiffs herein carry no workmen's compensation insurance.

TWENTY-FIRST: That the plaintiffs herein pay no social security taxes.

TWENTY-SECOND: That the plaintiffs herein pay no unemployment insurance taxes.

TWENTY-THIRD: That the picket on the picket line in front of The World Cafeteria requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations.

CONCLUSIONS OF LAW.

1. That the plaintiffs are entitled to a permanent injunction, restraining and enjoining the defendants and their agents, servants and employees and those acting under their direction or control, from stationing any pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place

88 *Decision.*

of business, and from interfering in any other wise with the plaintiffs' business.

2. Let a judgment be entered accordingly.

Dated, New York, July 19, 1939.

T. A. L.,
Justice of the Supreme Court,
State of New York.

89 **Judgment Appealed From.**

At a Special Term, Part I of the Supreme Court of the State of New York, County of the Bronx, at the Bronx County Building, 161st Street and Grand Concourse, in the Borough of the Bronx, City of New York, on the 19 day of June, 1939.

Present: Hon. Timothy A. Leary, *Justice.*

[Same Title.]

90 The above entitled action having been brought by the plantiffs for a permanent injunction against the defendants and the individuals under their control, restraining and enjoining them from stationing pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plain-

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tiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business, and issues of law and fact having been tried before me on the 14th day of June, 1939, and evidence having been adduced by both parties,

Now, on application of David L. Dehman, attorney for the plaintiffs, it is

ORDERED, ADJUDGED AND DECREED, that the plaintiffs have judgment against the defendants for a permanent injunction restraining them, and the defendants hereby are restrained and enjoined from stationing pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

92

Enter,

T. A. L.,
J. S. C.

MICHAEL McHUGH,
Clerk.

93

September 20, 1939.

94

Case and Exceptions.

SUPREME COURT,

BRONX COUNTY.

SPECIAL TERM, PART I.

[SAME TITLE.]

June 14, 1939.

Before: HON. TIMOTHY A. LEARY, *Justice.*

95

APPEARANCES:

DAVID L. DELMAN, Esq., for the plaintiffs.

BOUDIN, COHN & GLICKSTEIN, Esqs., for the defendant (by IRVING R. FEINBERG, Esq., of counsel), 20 West 43rd Street, New York City.

Mr. Delman: There are two cases here, but they are identical. The complaints are the same except for the title. I ask my adversary to stipulate the decision in one shall be the decision in the other, and that should go even on appeal, the one should
96 be the same as the other, because whoever loses one must lose the other. The facts are the same, the law is the same. I do not see why this Court should try two cases when the decision in one must, perforce, be the same as the other.

Mr. Feinberg: I cannot consent to any such stipulation for the following reasons: We have two individual sets of plaintiffs. The names are different. In one case there are seven plaintiffs, in the other there are nine. There are two separate

cafeterias, one under the name of Corno Cafeteria, and another under the name of the World Cafeteria. They are owned and operated by two brothers. The facts as to one are absolutely different, or have to be different, from the facts in the other. In order to establish their case the plaintiff must call the plaintiffs in each case to the stand.

The Court: I cannot make you do that, but if it is substantially the same kind of case, I cannot understand why you are going to go through the whole thing twice.

Mr. Delman: I am willing to stand or fall and have the decision in one the decision in the second without any testimony.

Mr. Feinberg: I will stipulate that the questions of law involved in both cases are the same. Our dissent is that the partnerships are not bona fide partnerships, but were devised after the establishment of the picket line solely for the purpose of this litigation. On cross-examination we intend to go into the question of the bona fides of these partnerships. One witness is going to testify as to one partnership and another witness is going to testify as to the other partnership. How can the testimony of one witness be binding in the other case, with the witnesses entirely different, and a different set of employees? I do not see how it is possible.

The Court: It is possible for this reason: if it was done for a purpose in one case, it was done for the same purpose in the other.

Mr. Delman: There is no question about it. In the Thompson case the Court of Appeals has said we have the right to avoid a labor dispute by doing just this.

Mr. Feinberg: I will stipulate the questions of law involved in both cases are the same, but it does

not follow, if he establishes a certain kind of arrangement in the first case, he is going to establish the same arrangement in the second case. I suggest we go ahead and try the first case. After all, one of the witnesses is to be put on in that case, and then towards the conclusion of the plaintiffs' case we can proceed——

The Court: Oh, yes, you cannot get any stipulation at the start. They have to have their day in court. I really think you will stipulate before it is over.

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DEMOSTHENES LOIZIDES, of 2104 Crotona Parkway, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Mr. Feinberg: May I request all plaintiffs and witnesses be excluded from the court room during the examination of each witness?

The Court: We cannot exclude parties, whether right or wrong.

Mr. Feinberg: I take an exception to your Honor's ruling.

102 The Court: We will exclude witnesses, but we are not going to exclude parties.

Mr. Feinberg: A party becomes a witness when he takes the stand.

The Court: I cannot exclude a party; he is entitled to know what is going on. We will exclude the witnesses but not the parties.

Mr. Feinberg: May I request all persons who Mr. Delman intends to have take the witness stand, whether parties or witnesses, be excluded from the court room?

The Court: We will exclude the witnesses but not the parties.

Mr. Delman: I take it that goes for the defendant's witnesses also.

The Court: For the defendant's witnesses, too.

Mr. Feinberg: I will exclude them—do you make that request?

Mr. Delman: Certainly. 104

Direct examination by Mr. Delman.

Q. You are known familiarly as Demos, your first name abbreviated? A. Yes. It is hard for American people to pronounce it. They call me Demos for short.

Q. Prior to April 22, 1939, were you the owner of the World Cafeteria? A. Yes.

Q. At 838 East 180th Street? A. That is right.

Q. You had that place reconstructed, did you? A. Yes.

Q. When did you open up for business? A. The 15th day of April, 1939.

Q. When you opened for business, or shortly before, was anybody from the defendant union around to see you? A. Yes. A day or two before we opened up there was a representative of the union who gave me his card, named Fred Taylor. 105

Q. And you had a conversation with him? A. Yes; he asked me to sign with the union. I said, "I have nothing to sign. Ask the men who are going to work here if they are willing to sign. I

106 *D. Loizides—For Plaintiffs—Direct.*

cannot stop them. If they want to, they are free to do it."

Q. Did he go over to the men who had been employed? A. Yes, several men; for instance, John Harris.

Q. Did he speak to those men in your presence? A. Yes; I asked him if he wants to speak to them in my presence, or not. He took them outside on the sidewalk. He was talking to them. I don't know what he said.

Q. You don't know what he said? A. No, I don't.

107 Q. After that conversation, and between that date, April 22nd, did all the employees and you meet—did you have a meeting? A. Yes, sir.

Q. And after that meeting— A. We had a meeting, I asked them if they wanted to join the union, it is up to them, they are free to do it, I cannot stop them from doing it. They said no. I said, "Since you don't want it, I don't want it either," and I suggested a partnership, because I got an idea.

Q. Never mind because. Subsequently did you and all your employees sign a certificate of doing business under the name of the World Cafeteria? A. Yes.

108 Mr. Delman: I offer in evidence certified copy of the certificate on file with the County Clerk's office.

Mr. Feinberg: If your Honor please, I object strenuously to the admission of this document. If there ever was a self-serving document, a document which is not binding on the defendant, this is one.

The Court: Objection overruled.

Mr. Feinberg: May I object also on the ground it is incompetent, irrelevant and immaterial?

(The paper was received in evidence and marked Plaintiffs' Exhibit No. 1.)

Q. I show you a document and ask you whether these are the signatures of all the people that had been working before this document was drawn—did you see them all sign that? A. Yes; they all signed in my presence. I signed, too.

Mr. Delman: I offer in evidence agree- 110
ment of partnership between those individuals whose names appear in Plaintiffs' Exhibit No. 1 in evidence.

Mr. Feinberg: If your Honor please, I again object to the admission of this particular document on the ground it is a self-serving declaration, wholly incompetent, not binding on the defendant, and in no way material or relevant to the issues here.

The Court: Objection overruled.

(The paper was received in evidence and marked Plaintiffs' Exhibit No. 2.)

Q. When did the picketing start? A. The picket- 111
ing started the day before we opened up the place of business.

Q. In other words, on the 14th of April? A. The 14th of April, that is right.

Q. Did you see the activities of the pickets? A. Yes, they walked up and down the street right near the door, and they were approaching customers not to go into the store.

112 *D. Loizides—For Plaintiffs—Direct.*

Q. Did you hear what the pickets said to customers? A. Yes.

Q. Please tell his Honor what you yourself heard, not what someone else told you?

Mr. Feinberg: I object to that line of examination and ask that the pickets be identified, inasmuch as under Section 876-A subdivision 6 thereof, it is specifically stated that no officer or member of any association, organization or of a labor union is bound by any of the acts of the individual members thereof, or by any other persons, unless it is specifically proven without the aid of any presumptions of law or fact that the doing of these acts by the persons or the actual participation in these acts were ratified by the officers of the union and the members of the union. This witness has been asked a particular question——

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The Court: We are not going to have any arguments. I can see there is danger of this being an argumentative case, and we might as well eliminate arguments at the beginning. Overruled.

Mr. Feinberg: Exception.

114 Q. What did you hear the pickets tell any people who wanted to enter your place of business? A. One of the things they said, he was talking to one of my customers who is in business at 180th Street. He said, "Don't go in here, because by patronizing this place you help Fascism," and another thing they said, they send customers across the street. They told them that the food in our store is no good, go across the street.

115

Q. That place across the street, do you know of your own knowledge whether that is a union or non-union place? A. Well, to my knowledge——

Mr. Feinberg: I object to the question.
Objection sustained.
Plaintiffs except.

Q. After that did you have your various policies of insurance, fire and so on, changed to the new owners as appears by Plaintiffs' Exhibits 1 and 2 in evidence? A. Yes; I gave them to my agent.

Q. And they have been changed? A. Yes; he put an endorsement on them.

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Q. Did you also have your bank account changed so that others may sign checks? A. Yes, sir.

Q. Instead of you alone? A. All the partners authorized me and Lucas Harris as one of the partners to sign checks.

Q. Of these seven or eight plaintiffs here, owners of this World Cafeteria——

Mr. Feinberg: I object to that characterization and ask that it be stricken.
The Court: Objection sustained.

Q. Of those names mentioned in the complaint, how many of those were partners of yours before? A. One of them was a partner with me before.

117

Q. Who? A. John Harris.

Q. He was a partner in the same World Cafeteria? A. Yes; he was a partner from January 30, 1938, until October 1, 1938.

Q. Are any of those people related to you? A. Yes, sir; two of them.

Q. Who are they? A. John Harris and his brother, Lucas Harris.

Q. And he is also one of the men named in this complaint? A. Yes.

Cross-examination by Mr. Feinberg.

Q. Mr. Loizides, you are a member of the Greek race; is that right? A. That is right.

Q. All of the other people named in this complaint as plaintiffs are also members of the Greek race? A. Not all of them.

Q. Who are members of the Greek race, at least?

119 Mr. Delman: I object to that as immaterial.

The Court: Objection sustained.

Q. Mr. Loizides, before you opened the cafeteria on April 15, 1939, that is, the World Cafeteria, were you engaged in any other business? A. No, sir.

Q. What were you doing at that time? What was your employment just prior to the opening? A. Just I opened to the location of the World Cafeteria.

Q. Before you anticipated opening the World Cafeteria and devoting your activities to that, what were you doing? A. You mean during the
120 time—during the period the store was closed?

Q. During 1938. A. I was working in the World Cafeteria; I was proprietor of it.

Q. So that the World Cafeteria did not open on April 15, 1939? A. The World Cafeteria is in existence since November, 1932.

Q. What did you mean when you said the World Cafeteria was opened on April 15th— A. We bought the World Cafeteria, me and my two brothers, on April 3, 1933.

Q. Yes, and what did you mean when you said the cafeteria opened on April 15, 1939? A. We closed it—I closed the place on February 11, 1939, for renovation..

Q. It was reopened on April 15, 1939; is that right? A. That is right.

Q. But that was a continuation of the old cafeteria which was open from 1933 to February 11th? A. The same place.

Q. And when you opened the cafeteria on April 15, 1939, did you have the same employees that you had in the old cafeteria? A. Yes, with the addition of two more—rather, three more. 122

Q. Can you tell me just what Mr. Angelos does in that cafeteria? A. Mr. Angelos is chef, he does all the cooking.

Q. Can you tell me what John Harris does in that cafeteria? A. He is the night manager and counterman, and he even washes dishes sometimes when he is busy.

Q. Can you tell me what Lucas Harris does in the cafeteria? A. Lucas Harris is a counterman.

Q. Can you tell me what Nick Fellongis does in the cafeteria? A. He is night kitchen man, helper, or counterman, and dishwasher, of course.

Q. Can you tell me what Harry Galotos does? A. He is day dishwasher, helper and chef, and behind the counter, too, if we are busy. 123

Q. Can you tell me what Mary Wald does in that cafeteria? A. She is a waitress and counter girl.

Q. Can you tell me what you yourself do in the cafeteria? A. I work as a counterman, I do all the buying, and I make up the prices. I mean, for instance, something, the butcher raises prices on, we have to raise prices. Of course, I know more about it.

Q. Who acts as manager of that cafeteria? A. I do.

Q. Were you manager before April 22, 1939? A. Before I was the sole owner and manager.

Q. This agreement, Plaintiffs' Exhibit No. 2, runs for a period of only one year, isn't that right? A. That is——

Mr. Delman: I object to that; it speaks for itself.

The Court: Objection sustained.

Q. When you entered into this agreement for one year, you did not expect to close the cafeteria up on April 30, 1940, did you? A. No, of course not.

Q. Under this arrangement you are to receive 39 per cent. of the profits, isn't that right? A. That is right, sir.

Q. Even though there were seven people? A. Yes, sir.

Q. Engaged in that enterprise? A. Because I have to——

Q. That is all——

Mr. Delman: I object to stopping the witness, if your Honor please.

Mr. Feinberg: I respectfully submit if Mr. Delman wishes to bring out any other facts, he can do so on redirect examination.

Q. When you formed this partnership arrangement you did not take any other new people into the partnership other than those who were already working in the cafeteria; is that right? A. No, sir.

Q. In other words, all the people who are now called partners by you were actually working in the

cafeteria up to the time they signed the contract? A. That is right.

Mr. Delman: I object to the form of the question, "called partners by you"—I object to that part of it.

The Court: Objection overruled.

Q. Where does the World Cafeteria keep its bank account? A. At the Public National Bank, 180th Street branch.

Q. When was that bank account opened? A. The bank account was opened before—you mean the World Cafeteria account? 128

Q. Yes. A. Or the account in my name?

Q. The World Cafeteria account. A. The World Cafeteria account was changed on May 16th.

Q. May 16th of this year? A. Yes.

Q. You were served with a subpoena in this case on or about May 12, 1939, were you not? A. Yes.

Q. And that subpoena asked you to come into court and bring with you all your books and records, including the payroll records, including your liability, accident, fire and compensation insurance policies, including permits, and including bank statements and records from October, 1938, to date. It was after you received that subpoena that you opened the bank account in the name of 129 the World Cafeteria, isn't that right? A. Well, I opened it May 16th.

Q. Have you in court with you all of the insurance policies of the World Cafeteria? A. Yes.

Mr. Feinberg: May I see those insurance policies?

(Papers produced by counsel for plaintiffs.)

130 *D. Loizides—For Plaintiffs—Cross.*

Q. I show you this insurance policy from the Hartford Fire Insurance Company which expires on March 10, 1940, covers premises 838 East 180th Street, and ask you in whose name that policy was taken out and in whose name it now exists?

Mr. Delman: That is objected to; it speaks for itself.

The Court: Objection sustained.

Mr. Feinberg: Is there any objection to me submitting this policy in evidence?

Mr. Delman: No.

131 Mr. Feinberg: I submit that policy in evidence.

Mr. Delman: Give the name so the record will show what it is.

Mr. Feinberg: Policy of the Hartford Fire Insurance Company, 478,793, expiring March 10, 1940.

(The policy was received in evidence and marked Defendant's Exhibit A.)

Q. This policy was originally in your name; is that right? A. Yes, sir.

Q. And it was endorsed over to World Cafeteria on May 24, 1939; is that right? A. That is right.

132 Q. That was after this action had been commenced; is that right? A. That is right.

Q. And after you had been served with a subpoena telling you to appear in court with this policy?

Mr. Delman: Objected to as immaterial.

The Court: Objection sustained.

Mr. Feinberg: Exception.

Q. As a matter of fact, you endorsed over all of your insurance policies after the commencement of this action, isn't that right? A. That is right.

Q. And after you had been served with a subpoena directing you to produce those policies in court, is that right?.

Mr. Delman: Objected to. The Court has already sustained an objection to a similar question.

The Court: Objection sustained.

Q. Who signs checks for the World Cafeteria? A. I do, and Lucas Harris.

Q. Lucas Harris is a relative of yours, is that right? A. Yes.

Q. He was with you in the old World Cafeteria before the new one opened up? A. Yes, sir. He is with me since February of 1938.

Q. Before you signed this agreement, Plaintiff's Exhibit No. 2, which you call a partnership agreement——

Mr. Delman: I object to that characterization, if the Court please.

The Court: Objection sustained.

Mr. Delman: I move to strike it out.

Q. Before you signed this agreement dated April 22, 1939, Plaintiffs' Exhibit No. 2, did any of the employees who signed that agreement invest any money in the business? A. No, but they signed notes.

Q. They did not give you any money; is that right? A. No; they did not give me any money. They signed notes.

136 *D. Loizides—For Plaintiffs—Cross.*

Mr. Feinberg: I did not ask whether they signed notes; I move to strike out the latter part of the answer.

The Court: Motion granted.

Q. The picket line was established by the defendant union in front of the World Cafeteria about the day it opened, on April 15, 1939? A. No, the day before.

Q. Then you went to see your lawyer to find out what you could do about getting the picket line removed? A. No, I did not go to my lawyer. I
137 talked to people in the store first and they did not want to join the union.

Q. Then you went to see a lawyer to find out what you could do about getting the picket line removed, is that right? A. I had an idea by making a partnership it may remove it.

Q. Where did you get that idea from? A. My milkman gave it to me.

Q. Is your milkman a lawyer? A. No, he is not.

Q. Are you a lawyer? A. No.

Q. But you just knew out of a clear sky that if you formed a partnership agreement you might be able to get the picket line removed? A. After I got the idea and discussed it among the workers that used to work there—there then, because they
138 are partners now—then they all agreed to the idea, then——

Q. Just a minute. A. We saw our lawyer.

Q. Do you remember speaking to Mr. Chris Panos, an official of the union, on the phone on May 9, 1939? A. I remember speaking to him on the phone; I don't remember exactly what day it was.

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Q. That was after the motion papers for temporary injunction had been served in this case, isn't that right? A. I think so.

Q. You told Mr. Panos that your lawyer had advised you to form a partnership; therefore, you did not have to take a union any more; is that right? A. No, I did not tell him that, but——

Q. That is all; in whose name is the lease covering this store? A. The lease is in my name.

Q. Do you have that lease with you? A. No; the lease is mortgaged.

Q. Pardon me? A. It is mortgaged.

Q. Do you have the lease? A. I haven't got it; 140
the mortgagee has it.

Q. You mean you have assigned the lease to the mortgagee? A. I signed a mortgage on the lease, what that means by law.

Mr. Delman: The mortgagee has possession of it now.

Q. Did you carry workmen's compensation insurance for your employees before April 22, 1939? A. I applied for it, and I dropped it; I just got a binder for several days.

Q. You stated the cafeteria was opened from 1933 until February— A. Well, during that time, yes—I mean after the renovation, because it was 141
stopped February 12th.

Q. That is from February 12th to April 22nd did you carry workmen's compensation insurance? A. No, sir, because I did not have any employees in the store; the store was closed; just the carpenters and contractor. He was supposed to furnish all the insurance policies.

142 *D. Loizides—For Plaintiffs—Cross.*

Q. From April 15th, the day the store was opened, until April 22nd, did you carry any workmen's insurance? A. I applied for it. They don't give you the policy right away; they give you a binder, until they find out how much wages you pay, and base it on that.

Q. Did you have a binder during that period? A. Yes, I had.

Q. For how long did the binder cover your employees? A. The binder was for seven days, and they extended it for seven more, but I dropped it in the meantime.

143 Q. So that now you carry no workmen's compensation at all? A. No; everyone has an accident insurance policy.

Q. From April 15th to April 22nd did you pay social security taxes to the Federal Government for your employees? A. No; we pay at the end of every three months. That means at the end of June, then we fill out the application; we have until the end of July to pay it.

Q. Did you pay social security taxes for your employees prior to February 22, 1939? A. Yes, I did.

Q. But you were not going to pay any social security taxes for your employees— A. I have no employees now.

144 Q. —after April 22nd? A. I have no employees now.

Q. You keep repeating that phrase, you have no employees; is that right? A. Of course I have no employees.

Mr. Delman: That is a direct answer to his question—well, there is no jury here; never mind.

Q. The picket line was put on in front of your place of business on April 15th? A. The 14th. 145

Q. April 14th, is that right? A. That is right.

Q. The picket line has been there continuously up until the present time? A. That is right.

Q. There has been a man walking up and down with a sign saying, "This place is unfair to labor and refuses to employ members of Cafeteria Employees Union, Local 302"? A. Sometimes they approach customers——

Q. I did not ask you that; I asked you what the sign says. A. The sign said, "This place is unfair to labor, please help us," and on the other sign they say, "Please patronize places that display this sign." They have a card on that sign. 146

Q. Please patronize places that display the union sign? A. The union card. They have a particular sign printed, but the people carrying the sign, they send them into places where there is no sign.

Mr. Feinberg: I move to strike that as not responsive.

The Court: Motion granted.

Q. The reason why you formed this partnership was in order to avoid the unionization of your place of business, isn't that right? A. The reason I formed that partnership is because the people that work for me did not want it. They did not feel like paying dues to anybody for making a living, and I did not want it, either. 147

Q. In other words, the reason you formed the partnership was to avoid a picket line walking up and down in front of your place? A. That is right, because it hurts my business.

Q. It hurts your business? A. Of course.

148 *D. Loizides—For Plaintiffs—Cross.*

Q. The old cafeteria that was open until February 22nd was also known as the World Cafeteria; is that right? A. Yes, it was.

Q. And you did business all the time under the name World Cafeteria? A. Yes, I did.

Q. When you assigned that policy, the fire insurance policy, Defendant's Exhibit A, you assigned it to the World Cafeteria; is that right? A. I assigned it; I don't know what my agent put there; I don't know exactly if he made the policy to my name or to the World Cafeteria.

149 The Court: You don't have to answer that, anyway. If there is an assignment, that indicates what it is. There is no use of your explaining it.

Q. Do you have the books and records of the World Cafeteria here pursuant to the subpoena that was served on you?

The Court: What more do you want? This man said he formed the partnership to avoid paying union dues. What was the answer to that question?

(The following part of the record was
150 read:

"Q. The reason why you formed this partnership was in order to avoid the unionization of your place of business; isn't that right? A. The reason I formed that partnership is because the people that work for me did not want it. They did not feel like paying dues to anybody for making a living, and I did not want it, either.

"Q. In other words, the reason you formed the partnership was to avoid a picket line walking up and down in front of your place? A. That is right, because it hurts my business.")

The Court: There is your case, right there.

Mr. Feinberg: We claim it is not a bona fide partnership.

Mr. Delman: I will state to the Court frankly that plaintiffs' case stands or falls—your Honor got the proposition very neatly and quickly—we claim that is exactly what we did, and we have a perfect right to do so under the Court of Appeals decision, as pointed out in my memorandum of law. 152

Mr. Feinberg: I don't want to argue.

The Court: No, but there is the case, and you have got it where it cannot be controverted; you have got it from the plaintiff, where there is no controversy, and you are going to succeed or fail right there. We are not going into the question of purpose any further.

Mr. Feinberg: I am not going into the question of the purpose any further, but there are facts that were brought out. 153

Q. Do you have the books and records of the World Cafeteria pursuant to the subpoena served on you? A. Yes, I have the books that cover the World Cafeteria since December, 1938. The other books are lost.

Mr. Feinberg: May I have those books? (Books produced.)

The Witness: That big book is for the old World Cafeteria.

The Court: He formed a partnership and formed it for a particular purpose.

Q. How much did Mr. Angelos receive as salary as a chef when the cafeteria opened on April 15th? A. He received $28.

Q. $28 a week? A. A week.

Q. How much did John Harris receive for salary as a counterman and dishwasher and night manager? A. $26.

155 Q. How much did Lucas Harris receive for his salary? A. $26.

Q. How much did Fellongis receive for his job as night watchman, dishwasher and counterman? A. $18.

Q. How much did Galotos receive for his salary as day dishwasher and counterman? A. $18.

Q. How much did Mary Wald receive for her job as waitress? A. $10.

Q. How much did you receive for your job as manager—never mind that; I withdraw that question. After this alleged partnership was formed on April 22nd, on May 21st Nick Fellongis was getting $18, isn't that right? A. That is right.

Q. That is the same amount as his salary was
156 before? A. These people worked——

Q. Is that the same amount— A. Yes, it is the same amount.

Q. And on May 21, 1939, Lucas Harris received the sum of $26, isn't that right? A. Yes.

Q. And that is the same amount as his salary was? A. Yes.

Q. And on the same day Gus Angelos received the sum of $28?

The Court: Well, he says they received the same salary as before.

A. I will give you the same answer for all.

Q. So all the plaintiffs receive the same amount each week that they formerly did? A. They do, mostly do the same; sometimes they don't, because the books are open, the books are not closed until the end of three months; every three months when we close the books—we don't know how much profit, how much loss we have.

Q. They receive now the same amount they formerly received? A. Yes, they do, now. 158

Q. Who keeps that little diary book here, the National Diary? A. I do.

Q. Is all of it in your handwriting? A. Most of it, I think.

Q. Under the terms of this agreement Nick Fellongis was supposed to receive 9 per cent. of the income, and Harry Galotos was supposed to receive 8 per cent. of the income, isn't that right? A. That is right.

Q. And they are both receiving $18 per week, isn't that right? A. Because they were receiving the same amount before.

Q. They are still receiving $18 per week now? A. Yes; the books are not closed——

Q. That is all; don't volunteer. 159

The Court: Now you have got all you want.

Mr. Delman: I would have conceded that whole testimony. I will concede further—

Q. Were there any other persons employed in this cafeteria at any time at all from April 14,

1939, to the present date; aside from the persons mentioned in the complaint, did you take on any people at all, either as extras, additional—any people? A. Yes, we take on extra when you subpoena us to court; we cannot close the business.

Q. In other words, you have additional employees aside from the plaintiffs mentioned in the complaint? A. We put the employees there when you subpoenaed us to come to court. We cannot close the business.

Q. You have certain employees who are hired during emergencies, isn't that right? A. Why, during emergencies, of course. We cannot close
161 the place of business; we cannot take partners away for a day——

The Court: Don't volunteer; answer just yes or no.

Redirect examination by Mr. Delman.

Q. Did you ever have any non-union employees there? A. No, sir.

Q. Did you ever have a strike in your place of business? A. No, sir.

Mr. Feinberg: Your Honor, I object to
162 that; it is immaterial and irrelevant.

The Court: Objection overruled.

Q. Each one of these men, the plaintiffs here, has executed a note for his share of the assets? A. Yes.

Q. And who has these notes? A. I think they are in your possession.

Q. In my possession, are they? I will look in my file. When are adjustments to be made as to profits and losses? A. Every three months.

Mr. Feinberg: Your Honor, I object to the question.

The Court: Objection sustained.

Q. Will you tell his Honor the reason for the same drawings at the present time

Mr. Feinberg: Objected to, if your Honor please.

The Court: Objection sustained. 164

Mr. Delman: May I finish my question?

The Court: Was there an agreement, a partnership agreement?

Mr. Delman: Yes.

Mr. Feinberg: It is in evidence already.

The Court: Yes, that is what I thought. I have not read it. I am not going to let him interpret it for me.

Mr. Delman: Your Honor is quite right.

(Recess until 2.15 o'clock.)

AFTERNOON SESSION. 165

Mr. Feinberg: I would like to have the prior witness recalled for a few extra questions.

Mr. Delman: All right.

166 *D. Loizides—For Plaintiffs—Recross.*

DEMOSTHENES LOIZIDES recalled.

Recross-examination by Mr. Feinberg.

Q. Mr. Loizides, you said the lease for the World Cafeteria was in your name; is that right? A. Yes.

Q. You did not assign that lease to anybody else after the agreement was signed? A. No, I did not.

Q. In other words, the lease is still in your name; is that right? A. Yes.

Q. You are also the owner of all the fixtures in
167 that cafeteria; is that right? A. No, I am the owner until they are paid up.

Q. What? A. I am not the owner of them unless they are paid up. There is a mortgage on the fixtures.

Q. But they are in your name as the owner of the equity; is that right? A. Yes.

Q. And you did not assign them to anybody else after this agreement was signed? A. No; when they pay their notes, then they own——

Mr. Feinberg: I ask that the latter portion be stricken.

The Court: Motion granted.

168 Q. Did you read this agreement, Plaintiffs' Exhibit No. 2, before you signed it? A. Yes, sir.

Q. Do you know that under the terms of that agreement there is to be no accounting until the end of the partnership next year? A. No accounting?

Q. No accounting is to be given to any of the members until the end of the partnership, isn't that right? A. No; an accounting is supposed to be made every three months.

Q. Can you show me in this agreement where it says there is to be an accounting every three months——

The Court: No.

Mr. Delman: I will show it to you.

Q. What is the income from the cafeteria?

Mr. Delman: I object to that.

The Court: Objection sustained.

Mr. Feinberg: If your Honor please, the agreement reads these employees are to be paid as a drawing account a certain per- 170
centage each week of net income. Certain employees, Mr. Angelos is to receive $28 per week, Mr. Galotos $18, and the waitress, Mary Wald, $10 a week.

The Court: Well, now, that is on the record.

Mr. Feinberg: If you take the amounts here and compare it with the percentages they are to receive in each particular case, the income is different. I understand objection to my question as to the income of this source has been sustained.

The Court: Yes.

Mr. Feinberg: Exception. 171

Q. Did you receive a Board of Health permit when you opened the cafe'teria? A. I have the old permit. I am going to renew it at the end of this month; that is when it expires.

Q. When was the permit obtained by you? A. The permit was last year; I have the permit here.

Q. May I see the permit? A. Yes, sir; it is among the insurance papers there (permit pro-

172 *D. Loizides—For Plaintiffs—Recross.*

duced). That permit was issued when I and Harris were partners, and I go down as a partnership, they did not want to put it on the permit: I don't know why they did not want to.

Q. This permit permits you, Demosthenes Loizides, to maintain a restaurant at 838 East 180th Street: is that right?

The Court: That is not in evidence, is it, and you are reading it?

Mr. Feinberg: I offer this permit in evidence.

173 Mr. Delman: There is no objection.

(The permit was received in evidence and marked Defendant's Exhibit B.)

Q. Is that the only permit that was issued to the cafeteria? A. Yes, June, 1938.

Q. This permit expires on June 30, 1939? A. That is right.

Q. Has any permit been issued to any of these plaintiffs in this case to conduct a cafeteria or restaurant? A. No other plaintiffs.

Q. You did not attempt to assign this permit to any of the other plaintiffs in this case, did you? A. What do you mean by assign?

174 Q. Transfer it. A. It is going to the whole partnership.

Mr. Delman: Objected to.

The Court: Objection sustained.

Q. Did you apply to the State Mediation Board to settle a controversy that you had with the union which started on April 15, 1939?

Mr. Delman: Objected to.

The Court: Objection sustained.

Mr. Feinberg: Exception.

Q. You had your lawyer file a certificate of doing business which was introduced as Plaintiffs' Exhibit No. 1; is that right? A. That is right.

Q. In 1936 you filed a certificate of doing business yourself as the World Cafeteria, didn't you? A. I myself, or was I and my partner?

The Court: We don't care anything about that; he tells us when he filed this certificate. 176

Q. Do you know there is now on file a certificate of doing business as the World Cafeteria at this very same address, signed by yourself and James Loizides, your brother?

Mr. Delman: That is conceded.

A. Well, of course, I did business under World Cafeteria, me and my brother.

Q. Did you file any certificate of cancellation, cancelling that? A. I did not know I had to file a cancellation.

Q. Did you file a certificate of cancellation? A. No, I didn't not. 177

Redirect examination by Mr. Delman.

Q. As to that lease, who has the lease? A. My lease was mortgaged to the 20th Century Contracting Company.

Q. And the 20th Century Contracting Company has your lease at the present time—the paper, the physical lease? A. Of course they have.

Q. They got that way before this partnership was formed? A. They got the lease when I—when the mortgage was signed; I don't remember the date exactly, but I think it was some time in March.

Recross-examination by Mr. Feinberg.

Q. Did you ask this mortgage company for your lease so that you could assign it to the partners? A. They did not give it to me.

179 Q. Did you ask them for it? A. No; I know I cannot get it, so they did not give it to me.

Q. But you did not ask them for it, did you? A. No.

Mr. Delman: If we could, I will take a concession; we could save so much time and effort on the part of Court and counsel. I have corroborating witnesses, each of these plaintiffs; if you will concede, not the truth, but that they will so testify, I am through with my case.

The Court: I will let you call them in rebuttal, if necessary.

Mr. Delman: All right. I will just take
180. this one and that will be the last one.

JOHN HARRIS, of 2160 Mapes Avenue, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Delman.

Q. Mr. Harris, you are one of the plaintiffs here? A. Yes.

Q. You were once before a partner of Mr. Loizides? A. That is right.

Q. When was that? A. It was about from February 1st, 1938, to November. I don't remember the day that we cancelled——

Q. Do you remember when the picketing was begun at this World Cafeteria? A. That was before we opened up, one or two days.

Q. Before it was opened for business? A. That is right.

Q. Do you recall after that, when the place was opened for business, did you go to a meeting of the employees? A. Yes. 182

Q. And after that meeting—was I present at that meeting? A. Who?

Q. Was I present at that meeting of the employees? A. No.

Q. After that were contracts prepared—I show you Plaintiffs' Exhibit No. 2 in evidence, and was this agreement signed by all of them, and were you present at the time? A. Yes.

Mr. Feinberg: I object; I object to the form of the question.

The Court: Objection overruled.

Q. Did Mr. Demosthenes Loizides, known to you probably as Demos— A. Yes. 183

Q. Before this agreement was signed, did he ask each of you whether you wanted to join the union?

Mr. Feinberg: I object to the form of the question as leading.

The Court: Objection sustained.

Q. You are now one of the owners, are you, of the World Cafeteria?

184 *John Harris—For Plaintiffs—Direct—Cross.*

Mr. Feinberg: I object to the form of the question, which is assuming something not proven, not sustained by the evidence.

The Court: Objection overruled.

A. Yes.

Q. You signed a note, did you? A. Yes.

Q. As your investment? A. Yes.

Q. And each of the others did, to, to your knowledge? A. Yes.

Q. What is the amount of your note?

185 Mr. Feinberg: I object to that. The note itself should be presented to this Court.

The Court: Objection overruled.

A. $1800.

Cross-examination by Mr. Feinberg.

Q. Mr. Harris, you work in the World Cafeteria? A. Yes.

Q. What duties do you do there? A. I am all over; I have no special——

Q. Don't you do something besides being the owner? A. Well, I wait on customers and I clean up the place; I take care of everything; I am

186 the night man.

Q. Were you employed in the World Cafeteria before April 22, 1939? A. I was. 1938.

Q. You have been employed there during the entire year 1938? A. I was the boss ten months in 1938.

Q. When were you laid off? A. I was not laid off.

Q. You were employed there from about February or March, 1938; is that right? A. That is right.

Mr. Delman: He said he was boss there.

The Witness: That is January to the end of 1938, I was employed.

Q. You have been continuously working there until the present time; is that right? A. No; before the place closed I was sick and I went to the hospital.

Q. This meeting that you just mentioned, that was called by Mr. Loizides, wasn't it? A. That was between all of us, the employees.

Q. Who called the meeting? A. Well, I cannot recall exactly.

188

Q. You did not call the meeting, did you? A. Maybe I do it.

Q. Did you speak to any of the other workers in the place and ask them to come to that meeting? A. I don't remember speaking to anyone, but everyone knew what it was all about. I don't know how they——

Q. When did the meeting take place, what time of day? A. Oh, I don't remember the day; I don't remember the time.

Q. Did it take place at night? A. I don't know.

Q. Did it take place in the morning? A. I said I don't know; I don't remember.

Q. You said you were at the meeting? A. I was in the meeting.

189

Q. And you don't know whether the meeting was in the morning or night? A. It was in the cafeteria; I don't know what time it was.

Q. You say you are the night man, and work at night? A. Yes.

Q. What time do you go on duty? A. 7 o'clock.

Q. How long do you work—until what time do you work? A. How long—6 or 7 o'clock.

Q. What is that? A. 6 to 7.

Q. You go on duty at 7 o'clock at night? A. Yes.

Q. And you work until 7 o'clock in the morning? A. Sometimes 7, sometimes earlier, sometimes 6.

Q. Was this meeting held while you were on duty or before you went to work? A. I tell you I don't know; I don't remember.

Q. Who told you to come to the meeting? A. Well, that was a long time. We talked many times. I cannot tell you exactly.

Q. Mr. Loizides asked you to come, didn't he?
191 A. Well, I was there sometimes, I come there for coffee before my hour to start.

Q. Can you read English? A. Yes.

Q. Did you read that agreement before you signed it? A. Yes, I did.

Q. Did not Mr. Loizides read it to everybody out loud? A. Mr. Loizides? Mr. Loizides read his own.

Q. Did you have a copy of that agreement? A. That is all right.

Q. How much did you receive as salary per week during the year 1938? A. 1938 I was a partner.

Q. When did you go back to work for the first time? A. Well, when the place opened up.

192 Q. That was on April 14, 1939; is that right? A. That is right.

Q. How much did you receive per week? A. For the week, I think $22.

Q. $22 per week and how much are you receiving now? A. Now I draw as much as I need.

Q. Don't you get a certain amount each week? A. No.

Q. When did you last receive a salary? A. Yesterday, I think.

Q. How much did you receive? A. Well, $22.

Q. And you received $22 a week before that, too, didn't you? A. That is all right. I drew more than that. You will find more than that.

Q. As a matter of fact, you received $26 per week, didn't you? A. That is right.

Q. You did not get $22? A. I draw $26 sometimes.

Q. And you get $26 every week, don't you? A. No; sometimes I draw $22.

Q. Under the agreement you are supposed to receive a certain amount every week? A. No, I am not supposed to receive a certain amount every week; we have got to have so much percentage. 194

Q. Did you speak to your lawyer before you came to court? A. Did I speak to my lawyer?

Q. Yes. A. No; I spoke to my lawyer.

Q. Did you speak to Mr. Delman before you came in court? A. When?

Q. Before today? A. Yes; I spoke to him many times.

Q. And he told you to say that you are a partner, and keep on saying you are a partner— A. No, he did not tell me to say, but the paper right there says I am a partner.

Q. And that is the only thing you have in your mind, you are a partner, you must keep on repeating it, you are a partner; is that right? A. I am a partner. 195

Q. That is, though you are a partner, you receive a certain stated amount every week; isn't that right? A. That is all right.

Q. Did you invest any money in this business? A. I gave a note, $1,800.

Q. When is the note due? A. After a year.

Q. After the agreement expires? A. That is right.

Q. You don't have to pay anything at all until after the agreement expires? A. No; I want to pay it up.

Q. If you don't want to pay, you don't have to? A. I have to pay at the end of the year.

Q. You don't have to pay if you don't want to at the end of the year? A. I pay according to the percentage.

Q. When this agreement expires at the end of the year you don't have to pay your money unless you want to pay it? A. I want to pay; I have to pay it because I owe——

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Mr. Delman: Just a minute. The Court can take judicial notice the note is an enforceable document.

Mr. Feinberg: We don't have the notes here. We don't know the terms thereof.

Mr. Delman: Just a moment. My client said I have that and I did not—we will show you the notes. I may have given them to the bookkeeper.

Q. Did you read this agreement before you signed it? A. That is right.

Q. Don't you know it says in the agreement you don't have to pay the money at the end of the year

198 unless you want to pay it? A. I want to pay it.

Q. But you don't have to pay it? A. I want to be an owner.

Mr. Delman: The Court has read this agreement. I don't recall any such provision in it.

The Court: Sustained.

Q. So far you have paid absolutely no money to Mr. Loizides, is that right? A. I gave him a note, which is just as good.

Q. The note was given to Mr. Loizides personally, is that right? A. That is all right.

Q. And it is made payable to him personally, is that right? A. That is right.

Q. Do you pay any interest on the note? A. Well, I don't think we pay interest, because we fixed the price to pay in one year. That includes everything in the note. After that, if we don't pay, we make no other agreement; we will have to pay interest and everything.

200

Q. At the end of a year you don't have to pay any interest on that note? A. We have to pay.

Q. Does the note bear interest from the present time until the end of the year? A. It is included in the price of the store.

Q. $1,800, the amount of the note, includes interest; is that right? A. That is right.

Q. Do you know how the sum of $1,800— A. Of course. We agree so much for the place.

Q. Do you know how the amount of $1,800 was arrived at? A. How?

Q. Yes. A. What do you mean by "how"?

Q. How did they decide you owe $1,800? A. Because I have 12 per cent.

201

Q. 12 per cent. of what? A. 12 per cent. of the place.

Q. Right now you are owning 12 per cent. of the place? A. That is right.

Q. But you have not paid in any money at all? A. I will pay in at the end of the year when the note expires.

Q. Don't you think you ought to pay interest?

202 *John Harris—For Plaintiffs—Cross.*

Mr. Delman: I object to the form of the question.

The Court: Objection sustained.

Q. Who hired you on the 15th of April, when the place of business opened? A: Who hired me?

Q. Yes. A. Well, I was an old employee; I went up to work.

Q. Did not you have to speak to somebody before you went to work? A. I did not speak to anybody.

Q. You just went in to work? A. That is right.

203 Q. Did you receive any salary for the first week you worked there before this meeting? A. Yes.

Q. So social security tax was deducted from your salary that you received that week? A. I don't remember that.

Q. Did you speak to Mr. Delman, asking him to start action for you for an injunction against the union? A. What is that?

Q. Did you speak to Mr. Delman and ask him to start action for an injunction against the union? A. We had a meeting, all together, and we decided to have an action.

Q. Was Mr. Delman present at that meeting? A. Mr. Delman?

Q. Yes. A. I don't think so.

204 Q. Did you sign any written statement authorizing Mr. Delman to bring this action for you?—

Mr. Delman: I object to that.

The Court: Objection sustained.

Q. Do you know how much money there is in the bank account of the World Cafeteria at present?

Mr. Delman: Objected to as immaterial.

The Court: Objection sustained.

Q. Do you know what the total income of the World Cafeteria was last week?

Mr. Delman: Objected to.

The Court: Objection sustained.

Q. This meeting you have just referred to, who was present? A. This meeting what?

Q. Who was present at the meeting? A. All of us.

Q. Whom do you mean by "all of us"?

The Court: Don't answer that. 206

Q. Did Mr. Loizides speak to you at that meeting? A. What meeting? A meeting to hire a lawyer?

Q. The meeting that you have testified to when asked by Mr. Delman whether or not you had a meeting. A. Still I don't understand what meeting.

The Court: The meeting to form a partnership.

The Witness: That is all right; everybody was there.

Q. Did Mr. Loizides speak to you at that meeting? A. Well, he told us the price, what percentage each one is going to get. 207

Q. Did he ask you whether you want to belong to the union? A. He did not ask me; someone from the union asked me.

Q. Mr. Loizides never spoke to you about belonging to the union? A. No.

Q. You heard Mr. Loizides testify on the stand that he asked all his employees whether they wanted to belong to the union and you say he was

not telling the truth when he said that? A. He did not ask me; someone else asked me.

Q. But he never spoke to you about belonging to the union? A. No.

Redirect examination by Mr. Delman.

Q. You know, do you not, Mr. Harris, that if there are losses here you have to pay 12 per cent. of the losses? A. Yes.

209 Mr. Feinberg: Objected to, same ground your Honor ruled when asked by me.

The Court: Objection sustained.

Mr. Delman: All right, question withdrawn. That is the case of the plaintiffs, of the World Cafeteria.

PLAINTIFFS REST.

Mr. Feinberg: If your Honor please, at this time I move to dismiss the complaint and ask for judgment in favor of the defendant dismissing the complaint on the following ground: In the first place, this partnership was formed and devised solely for the purpose of this litigation, of obtaining an injunction against the union, and the plaintiffs' manager himself has so testified. It is not a bona fide partnership; it was formed for one year only. All the employees there invested absolutely no money whatsoever, but gave notes. These notes do not became due until after the expiration of the partnership. The lease is still in the name of Mrs Loizides. The bank account is still

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in the name of Mr. Loizides. The permit from the Board of Health is still in his name. In addition, there are numerous other factors indicating the partnership is not a bona fide partnership, but was formed solely for the purpose of perpetrating a fraud upon these unsuspecting employees—and I use the word "unsuspecting" designedly—to deprive them of workmen's compensation, social security and unemployment insurance. Secondly, I point out that this case falls within Section 876-A, for, even assuming the partnership to be valid, which we do not, it arises out of a labor dispute. Section 876-A applies to all actions involving or growing out of labor disputes. This action grew out of a dispute which existed when the place was opened, therefore Section 876-A is applicable; the Court has no jurisdiction to issue any temporary or permanent injunction. The plaintiff has not complied with Section 876-A in any respect whatsoever. The papers do not contain proper allegations. There has been no bill of particulars here under 876-A and I respectfully request that the complaint be dismissed.

Thirdly, I respectfully submit that even were 876-A inapplicable, nevertheless the plaintiff would not be entitled to the relief prayed for. There is no evidence of violence, no evidence of destruction of property, no evidence of disorderly conduct. There is only evidence of peaceful picketing with an appeal to the public not to patron-

ize a non-union place. This place certainly is non-union. The right to picket does not depend upon Section 876-A. It was established long before the existence of 876-A. Judge Brandeis himself has said, even without these anti-labor injunction acts, no court may deprive a person of the right to peacefully picket. The cases cited by the plaintiff rest merely on two cases decided by Judge Cotillo in which we ourselves represented the defendant union. I am
215 not going to discuss them now——

The Court: No, that is enough; I don't want to hear argument. Motion denied.

Mr. Feinberg: Exception. Can I call my witness from outside?

Mr. Delman: You can bring them all in now. How many have you?

Mr. Feinberg: Three.

Mr. Delman: All right, bring them in.

DEFENSE.

RALPH DEL PISO, of 1268 Olmstead Avenue,
216 Bronx, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Feinberg.

Q. Are you an officer of the Cafeteria Employees Union, Local 302? A. Yes, I am.

Q. What office do you hold? A. Business agent.

Q. As business agent are you in charge of the picket line in front of the World Cafeteria on East 180th Street, Bronx? A. I am.

Q. Was the picket line placed in front of the cafeteria at your request? A. Yes, it was.

Q. And you are familiar with the actual occurrences on that picket line; is that right? A. Yes.

Q. Can you tell us when that picket line was first established? A. The picket line was first established the date the store opened up.

Q. Do you know what day that was? A. I believe it was around April 11th or 12th.

Q. Do you know whether the picket line was 218
established before the store opened up? A. No.

Q. Was the picket line placed there before the store opened? A. The picket line was established the day the store opened up.

Q. Do you know how many pickets have been on that picket line at any time? A. One.

Q. Was there ever at any time more than one picket? A. Not to my knowledge.

Q. On that picket line? A. Not to my knowledge.

The Court: You mean one at a time?

The Witness: One at a time, yes.

Q. Do you know just what activities that picket 219
engaged in? A. Just walked back and forth in front of the store notifying the public the place is unfair to organized labor.

Q. What does it say on the sign? A. "The World Cafeteria is unfair to organized labor; please help us win," and so on.

Q. Do you know whether or not there has been any police intervention on the picket line? A. Not that I know of.

Q. Do you know whether anybody has ever been arrested? A. We have had no arrests.

Mr. Delman: There is no such claim, I concede.

Mr. Feinberg: Is it conceded the picketing was orderly and peaceful at all times?

Mr. Delman: That is not your question at all. I will concede no one has been arrested.

Mr. Feinberg: Will you concede there has never been any disorderly conduct on that picket line?

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Mr. Delman: Disorderly conduct, yes, I will concede that, if you mean by disorderly conduct the way the courts have construed them, yes; not in the dictionary sense.

Q. Do you know whether it has ever been necessary for the police to be called to that place?

Mr. Delman: Objected to.

The Court: Objection sustained.

Q. After the picket line was placed in front of the World Cafeteria did you receive a visit from any one of the plaintiffs in this case? A. I did.

Q. At the union offices? A. I did.

Q. Do you know the name of the person who visited you? A. The person that visited me at that time was introduced to me by Chris Panos and he said his name was Chris—something like Lindbergh, or Limboros, something like that. I know his first name was Chris, Limbos, I am not sure whether you pronounce his name exactly that way.

Q. What did he say to you and what did you say to him? A. He came over——

Mr. Delman: Objected to as not binding on all these plaintiffs.

The Court: Objection overruled.

Q. What did he say to you and what did you say to him? A. He came over to me, he said he was an employee of the cafeteria, and that he had been sent by Louis Loizides, the proprietor, to find out what the union wanted in regard to the store, what the union views were.

Mr. Delman: I object to that on the ground this is not from the plaintiffs. We are trying now the World Cafeteria; Louis Loizides is the Cosmo Cafeteria, the second place. 224

Mr. Feinberg: But this person spoke in behalf of both cafeterias.

Mr. Delman: I object.

The Court: Objection overruled.

Mr. Delman: Exception.

Q. Yes, go ahead. A. He said they wanted to find out in order to make an appointment for the proprietor and the union. I gave him the information he requested and he left my office with the understanding of telephoning me the following day for a definite appointment for a conference 225 with the proprietors of both stores, an appointment which never materialized.

Q. Did he tell you who sent him to the office? A. He told me Louis Loizides sent him.

Mr. Delman: Objected to and I move to strike it out as not binding upon the plaintiffs.

The Court: I will take it.

Q. Before the cafeteria opened up did you speak to anybody about signing up with the union? A. I did, the afternoon before the cafeteria opened up, after several efforts to contact one of the employees I called up Louis Loizides in the other cafeteria. I spoke to him over the telephone, I spoke to him over the wire in regard to the World Cafeteria, and he answered me, he said, "Well, there is nothing I can do, that is my brother's place, you better get in touch with him." My efforts to continue the conversation were interrupted when he hung up.

227 Q. He hung up on you? A. That is right.

Q. He told you the World Cafeteria was his brother's place? A. He said, "That is my brother's place; you better see him."

Q. After the service of the motion papers, and on or about May 9th, did you visit the World Cafeteria? A. I did.

Q. Whom did you speak to there? A. I spoke to Louis Loizides, and one of the men in the place. I know the man that was with him in the store there, his cousin I believe him to be.

Q. What did he say to you? A. He had a conversation that morning with Chris Panos, one of our officers, and he had made an appointment with him, or rather, agreed to meet him in the store——

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Mr. Delman: That is purely hearsay: I object.

The Court: Yes.

Q. Just tell us what Mr. Loizides said to you. A. When I went over I asked him about getting together and settling the matter up. He told me he had called up his attorney, his attorney had for-

bidden him to do any talking, and that he had a very good case in court, and we were naturally asked to leave.

Cross-examination by Mr. Delman.

Q. You say you saw Louis Loizides at the World Cafeteria? A. At the Cosmo Cafeteria.

Q. Didn't you say a minute ago you spoke to Louis Loizides at the World Cafeteria? A. I did not say that.

Q. Who is Louis Loizides, point him out here, please? A. The man sitting behind the old lady with the checkered coat. 230

Q. Is this the man (indicating)? A. Yes.

Q. He told you that he spoke to a lawyer? A. That is what he told me.

Q. And the lawyer forbade him to say anything —right? A. I did not say that. I said he spoke to me, told me his lawyer had advised him not to take any measures, that he had a very good case in court.

Q. Did you ask him who his lawyer was? A. I did not.

Q. You did not ask him who his lawyer was? A. No.

Q. Did you know who the lawyer was? A. I knew the lawyer's name was Mr. Delman, but I 231 did not know him.

Q. Did you call the lawyer up to verify whether it is so, whether the lawyer told him that? A. I did not.

Mr. Feinberg: I object to that, entirely irrelevant.

The Court: Objection sustained.

Q. Was that the last time you went down there? A. Yes.

Q. Were you ever down to the World Cafeteria? A. Yes.

Q. When was that? A. I was there three times a week prior to his opening, tried to contact the employees; and at no time could I succeed.

Q. Did you ever contact anybody at the World? A. Yes, I did.

Q. When? A. About a week before he opened up.

Q. You just stated you could never contact anybody. A. Any employee known to me, no.

Q. That is all? A. I contacted a man who told me, when I presented my card to him, he was one of the bosses. I gave him my business card and he told me, "We will let you know."

Q. That is all you know about the World Cafeteria—correct? A. That is all I know.

Mr. Delman: I move to strike out the testimony in connection with the Cosmo, if your Honor please. It is certainly not binding on the World Cafeteria.

The Court: I will let it stand; denied.

CHRIS PANOS, of 40 West 95th Street, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Feinberg.

Q. Mr. Panos, are you an officer of the Cafeteria Employees Union, Local 302, affiliated with the American Federation of Labor? A. Yes.

Q. What office do you hold in that union? A. Associate labor chief.

Q. Do you know how many members there are in the Cafeteria Employees Union, Local 302?

Mr. Delman: Objected to as wholly immaterial.

The Court: Objection sustained.

Q. Did you at any time speak to Mr. Demos Loizides of the World Cafeteria about the picket line in front of his place of business? A. Yes, I did, on the corner.

Q. When was that? A. I don't exactly remember the date; that was after the picket line was established, when I heard about it, and I called him up, because of personal friendship, if I could help him to settle the strike. 236

Q. What did he say to you? A. He said, he referred to his brother at the Cosmo Cafeteria because he is, as he claims, the controlling factor.

Q. He said his brother in the Cosmo Cafeteria was the boss, the controlling factor, whatever his brother said went; is that right? A. That is right.

Mr. Delman: I object to counsel adding words to what the witness says. He said controlling factor; he used the word boss. I move to strike it out. 237

The Court: Denied.

Q. What did you say to him? A. I asked him if I could get in touch with his brother. He gave me the telephone number of the other cafeteria; I called his brother at the Cosmo.

Q. What did his brother say to you? A. He told me that he did not even know what it is all about.

238 what the difference was, what the union wanted. I told him that as an officer of the union, and a personal friend of his, I was interested in settling the trouble without having any further trouble in the shop, and if I could talk to him. He says yes. As a result of the conversation on the phone I went up to his store later.

Q. Was there anybody else with you when you went up to the store? A. Yes; Ralph Del Pino.

Q. The man who just testified? A. That is right.

239 Q. Did you see Mr. Loizides after that? A. Yes, I did, in the store at that time.

Q. Was it that very day? A. That is correct.

Q. What did he say to you? A. I asked him. I told him I came here as a result of a telephone conversation. He said, "Well, since I have spoken to you, I have spoken to my lawyer, I have been advised not to take any action whatsoever, because we are going to court." That is all there was; then we left.

(No cross-examination.)

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240 Tom Anthony, of 954 Jennings Street, Bronx, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Feinberg.

Q. Mr. Anthony, are you a member of the Cafeteria Employees Union, Local 302? A. Yes.

Q. On May 9, 1939, did you visit the World Cafeteria? A. Yes.

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Q. Did you speak to anybody in the cafeteria, anybody who was working there? A. Yes; I spoke to somebody. I did not know the name.

Q. Do you see the person whom you spoke to in court? A. Yes; that fellow with the mustache.

(The man pointed out stated his name to be Lucas Harris.)

Q. What did Mr. Harris say to you and what did you say to him? A. I said to him—I talked to him about the picket line in front of his store.

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Q. Yes? A. He said to me, "The union put the picket line," but he says, "we are going to fix them, we make everybody bosses, and we are going"——

The Court: I don't hear what you are saying.

A. (Continuing) He says to me, "The boss make us, everybody bosses, and we present to the court the papers, we throw the case out." I says, "What do you mean?" He says to me, "You know, funny papers we present to the court, everybody goes out."

(No cross-examination.)

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RALPH DEL PINO, a witness for defendant, recalled, testified further as follows:

Direct examination by Mr. Feinberg.

Q. Do you know whether the World Cafeteria is what you call a union shop?

Mr. Delman: It is conceded it is not.

Mr. Feinberg: Will you concede that there were no union employees employed there at any time?

Mr. Delman: That is right.

Mr. Feinberg: The people who were working there before this paper was signed did not belong to the union?

Mr. Delman: That is right; at no time.

Mr. Feinberg: The purposes of the union picketing was to get employees to sign an agreement with the union?

Mr. Delman: I assume that is the purpose; I don't know what is in their minds. I have enough intelligence to conceive that is the purpose of picketing.

Mr. Feinberg: Defendant rests.

REBUTTAL.

LOUIS LOIZIDES, of 2104 Crotona Parkway, Bronx, New York City, called as a witness on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Delman.

Q. Do you remember Mr. Del Pino, that gentleman at the extreme right, coming to see you after this injunction proceeding was started—do you remember? A. After the injunction?

Q. Yes, after or before, I don't know; do you remember seeing him in your place of business? A. He came before.

Q. Before? A. Yes.

Q. And you had a conversation with him? A. Well, he asked me to settle with the union.

Q. When was that, how long before? A. It must be a few days before; I don't remember exactly.

Q. Did you see him after that? A. No.

Q. Did you ever have any people working in your place that belongs to the union? A. No.

Q. Did you ever have any disputes with the union before he was down to see you? A. No.

Mr. Feinberg: I object to that line of examination. It is a conclusion of law, in the first place. It asks for the witness' interpretation of Section 876-A of the Civil Practice Act; also on the ground it is immaterial. 248

The Court: Objection overruled.

Q. You may answer. A. What is that?

Q. Did you have any disagreement with the union when he came down to see you? A. No.

Q. What did you tell Mr. Del Pino? A. I told him there was nothing to settle. There are no people working here; they are all partners.

Q. You told him that? A. Yes.

Q. Did you ever see him again? A. Never again. 249

Q. Did you tell him you called up your lawyer and your lawyer told you not to talk to him? A. Nothing of the kind.

(No cross-examination.)

Mr. Delman: That is all, your Honor, on the case of the plaintiff, the World Cafeteria, Angelos; and I renew my offer to

accept the decision of this Court in this case, also in the other case. It seems to me like a needless expenditure of effort, because the point of law is identical.

Mr. Feinberg: If your Honor please, we have not finished with this case yet. I would like to make an offer of proof that the plaintiffs in this case have made absolutely no effort to settle, arbitrate or mediate this dispute as required by the Civil Practice Act, Section 876-A. As a matter of fact, all efforts on behalf of the attorneys or any officer of the union——

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The Court: The plaintiff probably will concede that.

Mr. Delman: I will concede that, and I will direct the Court's attention to the complaint which says this does not come within Section 876-A because there are no employees here. Of course, I concede that we made no efforts, but they are trying to prove an effort here; the Court has not overlooked that. I concede we made no efforts to settle.

Mr. Feinberg: We are trying to prove our efforts were rejected. The burden is on the plaintiff to show they made some

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efforts. Certainly rejecting our efforts is prima facie evidence.

The Court: Let us not get into an argument. The plaintiffs admit they made no efforts to settle any dispute by negotiation with the union.

Mr. Delman: That is correct.

The Court: I will grant the relief to the plaintiffs by restraining the defendant from

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Picketing, on the ground that the plaintiffs are the owners of the establishment, and there are no employees on the premises.

Mr. Feinberg: I ask your Honor to disqualify yourself in the other case.

The Court: What will we do with the next case?

Mr. Feinberg: I submit the Court is disqualified.

The Court: No; there is no place else to send it. I am going to keep it.

Mr. Feinberg: Put the case over until the next term.

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The Court: Have you got a picket there?

Mr. Delman: Certainly; if they will remove the picket we will adjourn the case.

The Court: Yes; if you will remove the picket we will put it over.

Mr. Feinberg: Oh, no.

The Court: Put it down for Tuesday, the 20th. Submit findings on two days' notice.

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Plaintiffs' Exhibit 1.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK

The undersigned do hereby certify that they now conduct or transact business under the name and style of THE WORLD CAFETERIA, at 838 East 180th Street, Borough of Bronx, City of New York, and do further certify that the true or real full names of the persons conducting the said business, with the residence and business address and the age of any who may be infants, are as

257 follows:

Name	*Residence*	*Business Address*
GUS ANGELOS	266 Hicks Street, Bklyn.	838 E. 180th St. N. Y. C.
JOHN HARRIS	2160 Mapes Avenue, Bronx	838 E. 180th St. N. Y. C.
LUCAS HARRIS	2160 Mapes Avenue, Bronx	838 E. 180th St. N. Y. C.
NICK FELLOUGIS	86 Schermerhorn St. Bklyn.	838 E. 180th St. N. Y. C.
HARRY GALATIS	2067 Mohegan Ave. Bronx	838 E. 180th St. N. Y. C.
MARY WAAL	650 E. 182nd St. Bronx	838 E. 180th St. N. Y. C.
DEMOSTHENES LOIZIDES	2104 Crotona Pkway. Bronx	838 E. 180th St. N. Y. C.

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IN WITNESS WHEREOF we have this 22nd day of April, 1939, made and signed the certificate.

GUS ANGELOS
JOHN HARRIS
LOUIS HARRIS
NICK FELLOUGIS
HARRY GALATIS
MARY WAAL
DEMOSTHENES LOIZIDES

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK

On this 22nd day of April, 1939, before me personally appeared GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WOLL and DEMOSTHENES LOIZIDES, to me known and known to me to be the individuals described in and who executed the foregoing certificate and they thereupon duly acknowledged to me that they executed the same.

JOHN CANARAS 260
Notary Public, Bronx County
Bx Co. Cl. #462
N. Y. Co. Cl. #1072
Com. exp. March 30, 1940

No. 35012

STATE OF NEW YORK,
COUNTY OF BRONX, } ss.:

MICHAEL B. McHUGH, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, DO CERTIFY, That I have compared the preceding with the original.

Certificate of conducting business 261
under an assumed name

on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed April 26, 1939.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 19 day of May, 1939.

MICHAEL B. McHUGH,
(Seal) Clerk.

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Plaintiffs' Exhibit 2.

THIS AGREEMENT made this 22nd day of April, 1939, between GUS ANGELOS, of 266 Hicks Street, Brooklyn, N. Y., JOHN HARRIS, of 2160 Mapes Avenue, Bronx, N. Y., LUCAS HARRIS, of 2160 Mapes Avenue, Bronx, N. Y., NICK FELLOUGIS, of 86 Schermerhorn Street, Brooklyn, N. Y., HARRY GALATIS, of 2067 Mohegan Avenue, Bronx, N. Y., MARY WOLL, of 650 East 182nd Street, Bronx, N. Y., and DEMOS LOIZIDES, of 2104 Crotona Parkway, Bronx, N. Y.

263 WITNESSETH:

WHEREAS, the parties to this agreement are desirous of being partners and sole owners of the business now conducted at 838 East 180th Street, Bronx, N. Y., and known as THE WORLD CAFETERIA, and

WHEREAS, each of the parties to this agreement is an experienced cafeteria worker and fully understands the cafeteria business, and thus realizes the advantage of a partnership, where there will be a saving of wages for outside help.

NOW, THEREFORE, it is mutually agreed as follows:

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FIRST: The parties hereto shall, as partners and as more fully set forth hereinafter as to the rights of each party, engage in conducting THE WORLD CAFETERIA above referred to for a term commencing April 22, 1939, and terminating April 30, 1940.

SECOND: The firm name of the said partnership shall be THE WORLD CAFETERIA.

Plaintiffs' Exhibit 2.

THIRD: A certificate of the parties hereto doing business under this name shall be filed immediately upon the execution of these presents in the office of the County Clerk of the County of Bronx, and in the office of any such other County Clerk as THE WORLD CAFETERIA may hereafter do business.

FOURTH: The business of said partnership shall be conducted at 838 East 180th Street, Bronx, N. Y., and at such other place or places as the parties may by a majority vote agree.

FIFTH: The gross assets shall belong to the parties hereto in the proportions hereinafter enumerated and with the exceptions and provisos hereinafter enumerated.

SIXTH: The affairs of the partnership in all matters pertaining to the operation thereof shall be decided upon by the vote of any four (4) of them, by which the other three (3) hereby agree to abide unconditionally and hereby waiving any Court proceedings in case of so being overruled by the vote of four (4) of the partners.

SEVENTH: In view of the different capabilities and duties that will be assigned to each partner, as well as the different degree of experience, the following are the percentages of the net income that each of the partners agrees to accept as his weekly drawing:

GUS ANGELOS, fifteen (15%) per cent; LUCAS HARRIS, twelve (12%) per cent; JOHN HARRIS, twelve (12%) per cent; NICK FELLOUGIS, nine (9%) per cent; HARRY GALATIS, eight (8%) per cent; MARY WOLL, five (5%) per cent; DEMOS LOIZIDES, thirty-nine (39%) per cent.

268 *Plaintiffs' Exhibit 2.*

EIGHTH: In ascertaining the net profits, the following items are to be deducted from the gross income;

(a) The cost of goods sold.

(b) All operating expenses, to wit: rent, light and heat, taxes, insurance, interest, legal and professional expenses, repairs, advertising, bank charges, payments on the conditional sales agreement and mortgage of Twentieth Century Contracting Corporation, or its assignees or assigns, and other miscellaneous operating expenses.

269 NINTH: The value of the cafeteria together with the good will, is hereby fixed between the partners at Fifteen Thousand ($15,000.00) Dollars.

TENTH: Each of the parties hereto agrees, in the event of loss during the period of any three (3) months, to contribute his or her proportionate percentage, in the same proportion as above enumerated, anent, the drawings, such contributions to the losses to be either in cash or by means of deductions from the respective drawings of each.

ELEVENTH: The good will of the cafeteria, as
270 well as the name and all the fixtures and equipment, are to remain the sole and exclusive property of DEMOS LOIZIDES, upon the expiration of this contract, unless each of the other partners pays to DEMOS LOIZIDES his or her proportionate percentage of the assets as the valuation set forth (Fifteen Thousand ($15,000.00) Dollars), unless the business shows a loss by the end of the term of this contract, in which event the total loss shall be deducted from said Fifteen Thousand

($15,000.00) Dollars, in case the partners desire to exercise the option contained in this paragraph.

TWELFTH: The partners shall contribute in the proportions above referred to any additional capital that they may deem necessary for protecting or furthering the interests of the partnership.

THIRTEENTH: If any partner shall, with the written consent of the other partners, advance any monies to the partnership in excess of his contribution to the capital, the amount of such advance shall not be an increase of the capital of such partner or entitle him to any increase in his share of the profits, but the amounts of such advance shall be a debt due to such partner by the partnership and shall bear interest at the rate of six (6%) per cent per annum. Any such advance, with the accrued interest, shall be repaid by the partnership within thirty (30) days after the partnership shall have elected by notice in writing to repay the same or such partner shall have by notice in writing elected to demand the repayment thereof; in no event, however, shall the election of either the partnership or the particular partner be later than a month before the expiration of this agreement or any extension or renewal thereof. 272 273

FOURTEENTH: The account of the partnership shall be maintained under the name of DEMOS LOIZIDES, in such bank or banks as the partners from time to time shall elect and may by a majority vote elect that the checks drawn thereon shall be signed by one other partner in addition to DEMOS LOIZIDES.

274 *Plaintiffs' Exhibit 2.*

FIFTEENTH: Any partner may withdraw his share of the net profits at the end of each or any fiscal year and if a partner shall not withdraw the whole or any part of his share of the net profits, he shall not be entitled to any interest upon any of his profits not withdrawn, nor shall any such profits be deemed an increase of the capital stock or entitle him to an increased percentage of his profits.

SIXTEENTH: Proper books of account shall be kept at all times and shall aways be open to
275 inspection of any of the partners hereto, and each partner shall enter or cause to be entered therein a full and accurate account of all his transactions in behalf of the partnership.

SEVENTEENTH: All books of the partnership shall be kept at the place of business of the partnership and each partner shall have immediate and unstinted access thereto at all times.

EIGHTEENTH: Each partner shall at all times pay and satisfy his own personal debts; devote all his time and attention to the business of the partnership; inform the other partners of all transactions in behalf of the partnership; may not
276 assign or mortgage his share in the partnership or any part thereof or enter into any agreement, as a result of which any person, firm or corporation shall become interested with him therein.

NINETEENTH: None of the partners shall execute any notes in the name of the partnership unless by vote of four (4) of the partners, which vote shall be recorded in any of the books of the partnership and signed by said four (4).

TWENTIETH: Any partner who shall violate any of the terms, provisions and conditions of this agreement shall keep harmless the partnership property and shall also indemnify the other partners from any and all claims, demands and actions which may arise out of or by reason of any such violation of any of the terms, provisions or conditions thereof.

TWENTY-FIRST: If any partner shall be guilty of misconduct of such a character as to render it impracticable for the partners to carry on the partnership business, the offending partner may 278
be expelled from the partnership upon the vote of a majority of the partners, and upon his expulsion he is to be paid one-half ($\frac{1}{2}$) of the share of the net profits received by him during the preceding six (6) months, as well as the amount of the expelled partner's share of the capital in the partnership, less his proportionate share of losses, if any.

TWENTY-SECOND: At the termination of the partnership, by the extension of its term or by reason of any other cause, a full and accurate inventory shall be prepared and the assets, liabilities and income, gross and net, shall be ascertained, and in pursuance of the provisions above 279
outlined, the assets then remaining shall be divided into proportion as above enumerated, and in accordance with all the terms, conditions and provisos above referred to.

TWENTY-THIRD: If any dispute shall arise between the partners herein and they agree to arbitrate same, each partner appointing one arbitra-

tor and the majority of the arbitrators shall have the right to decide, and the right to appeal from the decision of said arbitrators, to any Court or any other body, is hereby expressly waived.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

GUS ANGELOS
LUCAS HARRIS
HARRY GALATIS
281 MARY WAAL
DEMOSTHENES LOIZIDES
NICK FELLOUGIS
JOHN HARRIS

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK }

On this 22nd day of April, 1939, before me personally appeared GUS ANGELOS, LUCAS HARRIS, JOHN HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WOLL and DEMOS LOIZIDES, to me known
282 and known to me to be the individuals described in and who executed the foregoing agreement, and they thereupon duly acknowledged to me that they executed the same.

JOHN CANARAS
Notary Public, Bronx County
Bronx County Clerk No. 162
New York County Clerk's No. 1072
(Seal) Commission expires March 30, 1940

Defendant's Exhibit A

No. 478793

STOCK COMPANY

HARTFORD FIRE INSURANCE COMPANY

INCORPORATED 1810

HARTFORD CONNECTICUT

CHARTER PERPETUAL

Amount, $ 2,000 *Rate* 1.364 *Premium, $* 27.28

In consideration of the Stipulations herein named

and of TWENTY SEVEN AND 28/100 Dollars Premium,

does insure DEMOSTHENES LOIZIDES

and legal representatives, to the extent of the actual cash value (ascertained with proper deductions for depreciation) of the property at the time of loss or damage, but not exceeding the amount which it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, for the

term of one year

from the 10th day of March 1939, at noon,

to the 10th day of March 1940, at noon,

against all DIRECT LOSS AND DAMAGE BY FIRE and by removal from premises endangered by fire, except as

herein provided, to an amount not exceeding TWO THOUSAND *** Dollars,

to the following described property while located and contained as described herein, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from fire but not elsewhere, to wit:

THE PRINTED FORM OF THIS POLICY WAS APPROVED BY THE INSURANCE COMMISSIONER OF CONNECTICUT

RESTAURANT and GRILL
(including improvements)

AS NOW OR MAY BE HEREAFTER CONSTITUTED.

$ nil ..... On stock consisting principally of provisions, wines, liquors, supplies and on other merchandise, including packages, full and empty.

$ 2,000 ..... On restaurant, bar and kitchen furniture and fixtures of every description, including counters, show cases, linen, plate and plated ware, cutlery, gas and electric fixtures and wiring, crockery, glassware, steam tables, heating and cooking apparatus and plumbing and their connections, soda water fountains, apparatus and appurtenances thereto, tables, chairs, icehouses, partitions, pictures, paintings, engravings and their frames, mirrors, cash registers and adding machines; wearing apparel of the assured and employees; and property of others for which the assured is legally liable, decorations on walls and ceilings, improvements and betterments, window shades, screens, bric-a-brac and all other furniture, fixtures, tools, implements, apparatus, appurtenances, utensils and iron safes, used in the business of a Restaurant, Lunch Room, Cafeteria, Bar and/or Grill, including awnings and signs outside of and attached to building.

All while contained in or attached to the building, additions and extensions thereto, or on and under sidewalks immediately adjoining, situate No. 838 East 180th Street,

Borough of Bronx, City of New York.

This Company agrees to accept and consider the assured in the event of loss or damage in the position of sole and unconditional owner of such improvements and betterments, any contract or lease the assured may have made to the contrary notwithstanding.

Privilege Granted.—For other insurance; for existing communications; to use gas and steam for light, heat and power; to use kerosene oil for lighting, heating and cooking purposes; to work at all hours or to cease operations; to remain unoccupied; for the installation and use of radio receiving apparatus and to use fuel oil system.

Loss, if any, payable in New York City funds.

Chattel Mortgage.—The existence of a chattel mortgage on the above described property shall not invalidate this policy and coverage hereunder is extended to include any such property which may be or become so encumbered or which is being purchased on any instalment or credit plan or conditional bill of sale.

Specific Insurance.—This policy shall not cover any loss on property specifically insured unless the amount of such loss shall exceed the amount of such specific insurance, which said excess only is declared to be under the protection of this policy.

No Control Clause.—This policy shall not be affected by failure of the assured to comply with any of the warranties or conditions endorsed hereon in any portion of the premises over which the assured has no control.

Sidewalk Clause.—The cover of this policy extends to property similar to that hereby insured while on sidewalk adjoining building or buildings herein described, and to the premises outside of said building or buildings, only when within ten feet of the walls of same.

Work and Materials Clause.—Privilege granted for present and other occupancies not more hazardous and to do such work and to keep and use such materials as are usual in such occupancies.

Alterations and Repairs Permit.—(Unsprinklered Risks—Specific Form of Policy).—Permission granted during the life of this policy to employ mechanics to make alterations, additions and repairs, and this policy (so far as it applies to building) shall also cover in accordance with its conditions such alterations or additions and all materials and supplies therein or therefor adjacent thereto, and (so far as it applies to contents of said building) shall extend to cover in such additions.

Alterations and Repairs Permit.—(Sprinklered Risks)—Permission granted during the life of this policy to employ mechanics to make alterations or repairs, and this policy (so far as it applies to the building being altered or repaired) shall also cover in accordance with its conditions all such alterations, materials and supplies therefor, therein or adjacent thereto, but this shall not be held to include the reconstruction or the enlargement of any building herein described. This permission does not waive or modify any of the terms or conditions of the automatic sprinkler clause attached to this policy.

New York Standard Clause Forbidding the Use of Electricity.—There shall be no liability under this policy while electricity is used for light, heat or power in the above described premises, unless permission is endorsed by this Company hereon.

Permit for the Use of Electricity.—Privileged to use electricity in the above mentioned premises for light and/or heat and/or power; it being hereby made a condition of this policy that where the equipment is owned or controlled in whole or in part by the assured, a Certificate shall be obtained from the New York Board of Fire Underwriters, and that no alterations shall be made in that portion of the equipment owned or controlled by the assured after Certificate is issued without notice thereof being given to the said Board.

If electrical appliances or devices of any kind, including wiring, are covered under this policy, this Company shall not be liable for any electrical injury or disturbance to the said electrical appliances, devices or wiring, whether from artificial or natural causes. This limitation to be operative notwithstanding any provision to the contrary in the Lightning Clause (if any) attached.

as their interest may appear, while contained in or attached to the building, additions and extensions thereto, or on and under sidewalks immediately adjoining, situate No. 838 East 180th Street,

Borough of Bronx, City of New York.

This Company agrees to accept and consider the assured in the event of loss or damage in the position of sole and unconditional owner of such improvements and betterments, any contract or lease the assured may have made to the contrary notwithstanding.

Privilege Granted.—For other insurance; for existing communications; to use gas and steam for light, heat and power; to use kerosene oil for lighting, heating and cooking purposes; to work at all hours or to cease operations; to remain unoccupied; for the installation and use of radio receiving apparatus and to use fuel oil system.

Loss, if any, payable in New York City funds.

Chattel Mortgage.—The existence of a chattel mortgage on the above described property shall not invalidate this policy and coverage hereunder is extended to include any such property which may be or become so encumbered or which is being purchased on any instalment or credit plan or conditional bill of sale.

Specific Insurance.—This policy shall not cover any loss on property specifically insured unless the amount of such loss shall exceed the amount of such specific insurance, which said excess only is declared to be under the protection of this policy.

No Control Clause.—This policy shall not be affected by failure of the assured to comply with any of the warranties or conditions endorsed hereon in any portion of the premises over which the assured has no control.

Sidewalk Clause.—This cover of this policy extends to property similar to that hereby insured while on sidewalk adjoining building or buildings herein described, and to the premises outside of said building or buildings, only when within ten feet of the walls of same.

Work and Materials Clause.—Privilege granted for present and other occupancies not more hazardous and to do such work and to keep and use such materials as are usual in such occupancies.

Alterations and Repairs Permit.—(Unsprinklered Risks—Specific Form of Policy).—Permission granted during the life of this policy to employ mechanics to make alterations, additions and repairs, and this policy (so far as it applies to building) shall also cover in accordance with its conditions such alterations or additions and all materials and supplies therein or therefor adjacent thereto, and (so far as it applies to contents of said building) shall extend to cover in such additions.

Alterations and Repairs Permit.—(Sprinklered Risks)—Permission granted during the life of this policy to employ mechanics to make alterations or repairs, and this policy (so far as it applies to the building being altered or repaired) shall also cover in accordance with its conditions all such alterations, materials and supplies therefor, therein or adjacent thereto, but this shall not be held to include the reconstruction or the enlargement of any building herein described. This permission does not waive or modify any of the terms or conditions of the automatic sprinkler clause attached to this policy.

New York Standard Clause Forbidding the Use of Electricity.—There shall be no liability under this policy while electricity is used for light, heat or power in the above described premises, unless permission is endorsed by this Company hereon.

Permit for the Use of Electricity.—Privileged to use electricity in the above mentioned premises for light and/or heat and/or power; it being hereby made a condition of this policy that where the equipment is owned or controlled in whole or in part by the assured, a Certificate shall be obtained from the New York Board of Fire Underwriters, and that no alterations shall be made in that portion of the equipment owned or controlled by the assured after Certificate is issued without notice thereof being given to the said Board.

If electrical appliances or devices of any kind, including wiring, are covered under this policy, this Company shall not be liable for any electrical injury or disturbance to the said electrical appliances, devices or wiring, whether from artificial or natural causes. This limitation to be operative notwithstanding any provision to the contrary in the Lightning Clause (if any) attached.

Lightning Clause.—This policy shall cover any direct loss or damage caused by Lightning (meaning thereby the commonly accepted use of the term Lightning, and in no case to include loss or damage by cyclone, tornado or wind-storm), not exceeding the sum insured, nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy. *Provided, however,* if there shall be any other insurance on said property this Company shall be liable only *pro-rata* with such other insurance for any direct loss by Lightning, whether such other insurance be against direct loss by Lightning or not.

New York Standard Average Clause.—This Company shall not be liable for a greater proportion of any loss or damage to the property described herein than the sum hereby insured bears to eighty per cent. (80 %) of the actual cash value of said property at the time such loss shall happen, nor for more than the proportion which this policy bears to the total insurance thereon.

In the event that the aggregate claim for any loss is both less than ten thousand dollars ($10,000) and less than five per cent. (5%) of the total amount of insurance upon the property described herein at the time such loss occurs, no special inventory or appraisement of the undamaged property shall be required.

If the insurance under this policy be divided into two or more items, the foregoing shall apply to each item separately.

Civil Authorities Clause attached.

Attached to Policy No. 478793 of the HARTFORD FIRE INS. CO.

Signed

F. W. COOPER PUBLISHER 7 DUTCH ST. N. Y.
FORM NO. 97

PERSONAL PROPERTY OUTSIDE OF BUILDINGS

The cover of this policy extends to property similar to that hereby insured while in cars on switches or sidetracks when such cars are on premises described or within 100 feet of buildings described in policy; or in the open on premises, or on platforms in contact with buildings described in policy; or on sidewalks, streets, alleys or detached platforms, when within 50 feet of buildings described in policy.

CIVIL AUTHORITIES CLAUSE

This policy is extended to insure against direct loss and damage to the described property caused by acts of destruction executed by duly constituted civil authority at the time of and only during a conflagration when necessary for the purpose of retarding the same; subject, however, to all other terms and conditions of the policy.

Form 3682[00]

ENDORSEMENT

New York, May 24,1939

Interest of this policy now vested in World Cafeteria,as is now or may be hereafter constituted,and not as heretofore.

Loss, if any, payable to assured.

Not valid unless attached to Policy No. 478793

HARTFORD FIRE INSURANCE COMPANY, HARTFORD, CONN.

Wa

George W Cleveland

Signature for Company.

In Witness Whereof, this company has executed and attested these presents, but this policy shall not be valid until countersigned by the Manager of the NEW YORK CITY DEPARTMENT of the company at NEW YORK, N. Y.

Lloyd P Smith

Secretary

A H Bissell

President

George W Cleveland

Manager

Countersigned at NEW YORK, N. Y.

this 10th *day of* April *19* 39

Fraud, misrepresentation, etc. This entire policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

Uninsurable and Excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money, notes or securities; nor, unless specifically named hereon in writing, bullion, manuscripts, mechanical drawings, dies or patterns.

Hazards not covered. This Company shall not be liable for loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises.

This entire policy shall be void, unless otherwise provided by agreement in writing added hereto,

Ownership, etc. (a) if the interest of the insured be other than unconditional and sole ownership; or (b) if the subject of insurance be a building on ground not owned by the insured in fee simple; or (c) if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property insured hereunder by reason of any mortgage or trust deed; or (d) if any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard); or (e) if this policy be assigned before a loss.

Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage occurring

Other insurance. (a) while the insured shall have any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or

Increase of hazard. (b) while the hazard is increased by any means within the control or knowledge of the insured; or

Repairs, etc. (c) while mechanics are employed in building, altering or repairing the described premises beyond a period of fifteen days; or

Explosives, gas, etc. (d) while illuminating gas or vapor is generated on the described premises; or while (any usage or custom to the contrary notwithstanding) there is kept, used or allowed on the described premises fireworks, greek fire, phosphorus, explosives, benzine, gasoline, naphtha or any other petroleum product of greater inflammability than kerosene oil, gunpowder exceeding twenty-five pounds, or kerosene oil exceeding five barrels; or

Factories. (e) if the subject of insurance be a manufacturing establishment while operated in whole or in part between the hours of ten P. M. and five A. M., or while it ceases to be operated beyond a period of ten days; or

Unoccupancy. (f) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of ten days; or

Explosion, lightning. (g) by explosion or lightning, unless fire ensue, and, in that event, for loss or damage by fire only.

Chattel mortgage. Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage to any property insured hereunder while incumbered by a chattel mortgage, and during the time of such incumbrance this Company shall be liable only for loss or damage to any other property insured hereunder.

Fall of building. If a building, or any material part thereof, fall except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

Pro rata liability. This Company shall not be liable for a greater proportion of any loss or damage than the amount hereby insured shall bear to the whole insurance covering the property, whether valid or not and whether collectible or not.

Noon. The word "noon" herein means noon of standard time at the place of loss or damage.

Mortgage interests. If loss or damage is made payable, in whole or in part, to a mortgagee not named herein as the insured, this policy may be canceled as to such interest by giving to such mortgagee a ten days' written notice of cancellation. Upon failure of the insured to render proof of loss such mortgagee shall, as if named as insured hereunder, but within sixty days after notice of such failure, render proof of loss and shall be subject to the provisions hereof as to appraisal and times of payment and of bringing suit. On payment to such mortgagee of any sum for loss or damage hereunder, if this Company shall claim that as to the mortgagor or owner, no liability existed, it shall, to the extent of such payment be subrogated to the mortgagee's right of recovery and claim upon the collateral to the mortgage debt, but without impairing the mortgagee's right to sue; or it may pay the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Requirements in case of loss. The insured shall give immediate notice in writing, to this Company, of any loss or damage, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity and cost of each article and the amount claimed thereon; and, **the insured shall, within sixty days after the fire, unless such time is extended in writing by this Company, render to this Company a proof of loss,** signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the fire, the interest of the insured and of all others in the property, the cash value of each item thereof and the amount of loss or damage thereto, all incumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish a copy of all the descriptions and schedules in all policies and if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property insured is located. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree, shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company

gage or trust deed; or (d) if any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard); or (e) if this policy be assigned before a loss.

Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage occurring

Other insurance. (a) while the insured shall have any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or

Increase of hazard. (b) while the hazard is increased by any means within the control or knowledge of the insured; or

Repairs, etc. (c) while mechanics are employed in building, altering or repairing the described premises beyond a period of fifteen days; or

Explosives, gas, etc. (d) while illuminating gas or vapor is generated on the described premises; or while (any usage or custom to the contrary notwithstanding) there is kept, used or allowed on the described premises fireworks, greek fire, phosphorus, explosives, benzine, gasoline, naphtha or any other petroleum product of greater inflammability than kerosene oil, gunpowder exceeding twenty-five pounds, or kerosene oil exceeding five barrels; or

Factories. (e) if the subject of insurance be a manufacturing establishment while operated in whole or in part between the hours of ten P. M. and five A. M., or while it ceases to be operated beyond a period of ten days; or

Unoccupancy. (f) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of ten days; or

Explosion, lightning. (g) by explosion or lightning, unless fire ensue, and, in that event, for loss or damage by fire only.

Chattel mortgage. Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage to any property insured hereunder while incumbered by a chattel mortgage, and during the time of such incumbrance this Company shall be liable only for loss or damage to any other property insured hereunder.

Fall of building. If a building, or any material part thereof, fall except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

Added clauses. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss or damage, and any other agreement not inconsistent with or a waiver of any of the conditions or provisions of this policy, may be provided for by agreement in writing added hereto.

Waiver. No one shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement added hereto, nor shall any such provision or condition be held to be waived unless such waiver shall be in writing added hereto, nor shall any provision or condition of this policy or any forfeiture be held to be waived by any requirement, act or proceeding on the part of this Company relating to appraisal or to any examination herein provided for; nor shall any privilege or permission affecting the insurance hereunder exist or be claimed by the insured unless granted herein or by rider added hereto.

Cancellation of policy. This policy shall be canceled at any time at the request of the insured, in which case the Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by the Company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

damage, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity and cost of each article and the amount claimed thereon; and, **the insured shall, within sixty days after the fire, unless such time is extended in writing by this Company, render to this Company a proof of loss,** signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the fire, the interest of the insured and of all others in the property, the cash value of each item thereof and the amount of loss or damage thereto, all incumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish a copy of all the descriptions and schedules in all policies and if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property insured is located. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree, shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this Company to take all, or any part, of the articles at the agreed or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required; but

Abandonment. there can be no abandonment to this Company of any property.

When loss payable. The amount of loss or damage for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss or damage is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, nor unless commenced within twelve months next after the fire.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

HARTFORD FIRE INSURANCE COMPANY

INCORPORATED 1810

DIRECTORS

R. M. BISSELL

WALTER L. GOODWIN	F. SPENCER GOODWIN
SAMUEL FERGUSON	WILLIAM MAXWELL
PHILIP B. GALE	PORTER B. CHASE
GEORGE S. STEVENSON	JAMES L. THOMSON
JOSEPH R. ENSIGN	H. BISSELL CAREY

EXECUTIVE OFFICERS

R. M. BISSELL, PRESIDENT

JAMES L. THOMSON
CHAIRMAN FINANCE COMMITTEE

JAMES WYPER, VICE-PRESIDENT	F. C. WHITE, VICE-PRESIDENT
JAMES L. THOMSON, VICE-PRESIDENT	C. S. KREMER, VICE-PRESIDENT
C. S. TIMBERLAKE, MARINE VICE-PRESIDENT	CLYDE P. SMITH, SECRETARY
JOHN M. HOLMES, SECRETARY	A. W. TYROL, SECRETARY
M. G. WIGHT, SECRETARY	J. S. GILBERTSON, MARINE SECRETARY

EASTERN DEPARTMENT
HARTFORD BUILDING
HARTFORD, CONN.

SOUTHERN DEPARTMENT
W. R. PRESCOTT, GENERAL AGENT
ATLANTA, GA.

PACIFIC DEPARTMENT
JOY LICHTENSTEIN, MANAGER
SAN FRANCISCO, CAL.

WESTERN DEPARTMENT
SMITH & WHEELER, MANAGERS
CHICAGO, ILL.

SUPREME COURT - BRONX CO.
FILED
JUN 14 1939
C. D. [illegible]SHIRE, Sten'k

NEW YORK, N. Y.

Standard Fire Insurance Policy of the State of New York

Expires March 10th, 1940

Property #838 East 180th Street, Bronx, New York

Amount . . . . $ 2,000

Premium . . . $ 27.28

Demosthenes Loizides

~~$ 15/00~~

No. 478793

Richard F. Haarmann

HARTFORD FIRE INSURANCE COMPANY

HARTFORD, CONN.

RICHARD F. HAARMANN
INSURANCE
[illegible] MADISON AVE. NEW YORK N.Y.
[illegible]

covering the same property read exactly alike. If they do not they should be made uniform at once.

Receipt for Return Premium

To be Signed by the Assured

Agency, ... *19* .....

In Consideration of ..... *Dollars*

return premium, receipt of which is hereby acknowledged, this policy is hereby canceled and surrendered to the company.

..... *Assured.*

No. of Policy .....

No. of Renewal .....

Amount insured, $ .....

Date of cancellation, | Year | Month | Day |

Date of Policy, | | | |

Time in force, ...

Premium paid, $ .....

Premium earned at ..... *rate,* $ .....

Premium returned, $ .....

IF PRO RATA, STATE REASON WHY

YOUR POLICY CAN BE EXTENDED TO COVER—

OIL BURNER SMUDGE DAMAGE,
WINDSTORM, HAIL, EXPLOSION,
RIOT, AIRCRAFT, AND
MOTOR VEHICLE DAMAGE

For a slight additional charge

CONSULT YOUR BROKER

Form 53144

NOTICE

In compliance with instructions from the SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, to every insurance company, this policy, IF NOT WANTED, must be returned promptly for cancellation; otherwise an EARNED PREMIUM WILL BE CHARGED for the time the policy is in force.

Form 53111

Defendants' Exhibit A.

Insurance Policy issued by Hartford Fire Insurance Company for 838 East 180th Street, No. 478,793, expiring March 10, 1940.

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Defendants' Exhibit B.

Permit to Demosthenes Loizides for Restaurant at 838 East 180th Street.

(Omitted pursuant to stipulation at page 97.)

Statement as to Evidence.

The foregoing case contains all of the evidence adduced and proceedings had upon the trial herein, together with the exceptions of both sides
287 taken on said trial.

Affidavit of No Opinion.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

IRVING R. FEINBERG, being duly sworn, says:

That he is an attorney associated with Boudin, Cohn & Glickstein, the attorneys for the defendants-appellants in this action, and is familiar with the same. That no opinion in writing was
288 rendered herein by the Justice who presided at the trial of this action.

IRVING R. FEINBERG.

Sworn to before me this
15th day of January, 1942

JEAN TAYLOR,
Notary Public,
Bronx County.
Certificate filed in New York County.
Comm. expires March 30, 1943.

289

Stipulation as to Defendants' Exhibit B.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners trading under the name of THE WORLD CAFETERIA,

Plaintiffs,

against

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WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES' UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, that Defendants' Exhibit B herein consists of a permit issued by the Department of Health of the City of New York in the month of June, 1938, to Demosthenes Loizides, to conduct and maintain a restaurant at No. 838 East 180th 291 Street, in the Borough of Bronx, City of New York.

Dated: New York, N. Y., December 27, 1941.

DAVID L. DELMAN,
Attorney for Plaintiffs.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants.

292

Stipulation Settling Case.

IT IS HEREBY STIPULATED that the foregoing record contains all the evidence given upon the trial of this action, together with the exceptions of both sides taken on said trial, and that the same be settled and ordered on file as the case on appeal and annexed to the judgment roll herein.

Dated, New York, January 15th, 1942.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants-Appellants.

293

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

Order Settling Case.

On the above stipulation, I HEREBY CERTIFY that the foregoing record contains all the evidence given on the trial of this action, together with the exceptions of both sides taken on said trial, and the said record is hereby settled and ordered on file as the case on appeal in this action.

Dated, New York, January 19, 1942.

294

TIMOTHY A. LEARY,
J. S. C.

295

Stipulation Waiving Certification.

Pursuant to Section 170 of the Civil Practice Act,

IT IS HEREBY STIPULATED that the foregoing consists of true and correct copies of the notice of appeal, judgment roll, and case and exceptions as settled, and of the whole thereof, now on file in the office of the Clerk of the County of Bronx, and that certification thereof by the Clerk of said County, pursuant to Section 616, is hereby waived.

Dated, New York, January 15th, 1942.

296

BOLDIN, COHN & GLICKSTEIN,
Attorneys for Defendants-Appellants.

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

Order Filing Record in Appellate Division.

Pursuant to Section 616 of the Civil Practice Act; it is

ORDERED that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the First Department. 297

Dated, New York, January 19, 1942.

TIMOTHY A. LEARY,
J. S. C.

298

Notice of Appeal to Court of Appeals.

SUPREME COURT

OF THE STATE OF NEW YORK,

BRONX COUNTY.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners, trading under the name of the WORLD CAFETERIA,

Plaintiffs,

299 against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as president of said union;

Defendant.

Sirs:

PLEASE TAKE NOTICE that the defendant William Mesevich, President of the Cafeteria Employees Union Local 302, hereby appeals to the Court of Appeals of the State of New York from the judgment dated the 17th day of April, 1942, and en-
300 tered in the office of the Clerk of the County of Bronx on the said date, which judgment was entered upon an order of the Appellate Division of the Supreme Court dated the 10th day of April, 1942, and entered in the office of the Clerk of said Court on said date, affirming, two Justices dissenting, the judgment entered in the office of the Clerk of the County of Bronx on the 20th day of September, 1939; and that this appeal is taken from the whole of said judgment and order and from each and every part thereof.

Notice of Appeal to Court of Appeals. 301

PLEASE TAKE FURTHER NOTICE that the appeal is taken upon the following ground, among others:

That said judgment and order are violative of Constitution of the United States, particularly Amendments I, V and XIV thereof, and the Constitution of the State of New York, particularly Article 1, Section 8, thereof.

Dated, April 22, 1942.

Yours, etc.,

BOUDIN, COHN & GLICKSTEIN, 302
Attorneys for Defendant.
20 West 43rd Street,
Borough of Manhattan,
City of New York.

To:

MICHAEL McHUGH,
Clerk of County of Bronx.

DAVID L. DELMAN, Esq.,
Attorney for Plaintiffs,
261 Broadway,
Borough of Manhattan,
City of New York.

303

304

Order of Affirmance.

At a term of the Appellate Division of the Supreme Court, held in and for the First Judicial Department in the County of New York, on the 10th day of April, 1942.

Present—Hon. FRANCIS MARTIN,
Presiding Justice,
" ALFRED H. TOWNLEY,
" EDWARD S. DORE,
" ALBERT COHN,
" JOSEPH M. CALLAHAN,
305 *Justices*.

GUS ANGELOS, etc., et al, Respondents, against WILLIAM MESEVICH, Appellant.	11535

An appeal having been taken to this Court by the defendants from a judgment of the Supreme Court, Bronx County entered on the 20th day of September, 1939, and said appeal having been
306 argued by Mr. Irving Robert Feinberg, of counsel for the appellants, and by Mr. David L. Delman, of counsel for the respondents; and due deliberation having been had thereon,

It is ordered and adjudged that the judgment so appealed from be and the same is hereby, in all things, affirmed; and that the respondents recover of the appellants the costs of this appeal. Two

of the Justices dissent and vote to reverse and dismiss the complaint.

Enter,

F. M.

Judgment of Affirmance.

SUPREME COURT

OF THE STATE OF NEW YORK,

BRONX COUNTY. 308

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners, trading under the name of the WORLD CAFETERIA, Respondents, against	Plaintiff's address 838 E. 189th Street, Bronx, New York City
WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as president of said union, Appellant.	Defendant's address 701 Eighth Avenue New York City

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The defendants having appealed to the Appellate Division from a judgment in favor of the plaintiffs, enjoining the defendants permanently from picketing the defendant's place of business and the Appellate Division, by its order, dated April 10, 1942, having affirmed the judgment together with costs and disbursements, and the costs having been taxed at $77.73, it is

310 *Judgment of Affirmance.*

On motion of David L. Delman, attorney for the plaintiffs,

ORDERED, that the plaintiffs, Gus Angelos, John Harris, Lucas Harris, Nick Fellougis, Harry Galatis, Mary Waal and Demosthenes Loizides, co-partners, trading under the name of the World Cafeteria, have judgment against the defendants in the sum of $77.73, and the plaintiffs have execution therefor.

MICHAEL B. McHUGH,
Clerk.

311 April 17, 1942.

Memorandum Opinion of Appellate Division.

(N. Y. Law Journal, April 11, 1942.)

By MARTIN, P.J.; TOWNLEY, DORE, COHN and CALLAHAN, J.J.

11535. Angelos et al., res., v. Mesevich etc., ap—Judgment affirmed, with costs. No opinion. (Dore and Callahan JJ., dissent and vote to reverse and dismiss the complaint on the ground that the al-
312 leged partnerships among the plaintiffs are not bona fide. The testimony clearly indicates that the relationship of employer and employee continued to exist among these parties.) Order filed.

313

Affidavit of No Opinion by Appellate Division.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

IRVING R. FEINBERG, being duly sworn, deposes and says that he is an attorney associated with Boudin, Cohn & Glickstein, the attorneys for the defendant-appellant in this action; that no opinion was rendered by the Appellate Division of the Supreme Court for the First Department in affirming the judgment appealed from herein, except the memorandum printed hereinabove.

314 IRVING R. FEINBERG.

Sworn to before me this
day of June, 1942.

JEAN TAYLOR,
Notary Public,
New York County.
Commission expires March 30, 1944.

315

316

Stipulation Waiving Certification in Court of Appeals.

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing consists of true and correct copies of the record on appeal to the Appellate Division, the notice of appeal to the Court of Appeals, the order of affirmance, the judgment of affirmance, and the memorandum of the Appellate Division of the Supreme Court for the First Department, and the whole thereof, now on file in the office of the Clerk of the County of Bronx; and certification thereof, pursuant to Section 616 of the Civil Practice Act,
317 is hereby waived.

Dated, New York, June , 1942.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant-Appellant.

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

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319

Remittitur.

COURT OF APPEALS

STATE OF NEW YORK, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 21st day of January in the year of our Lord one thousand nine hundred and forty-three, before the Judges of said Court.

Witness,

The Honorable IRVING LEHMAN, 320
Chief Justice, Presiding.
John Ludden, Clerk.

Remittitur January 21, 1943

GUS ANGELOS and ors.,
co-partners tc.,
Respondents,

against

WILLIAM MESEVICH, President of the Cafeteria Employees Union Local 302, an unincorporated association tc., 321
Appellant.

BE IT REMEMBERED, That on the 27th day of June in the year of our Lord one thousand nine hundred and forty-two William Mesevich, President of Cafeteria Employees Union Local 302, tc., the appellant in this cause, came here unto the Court of Appeals, by Boudin, Cohn and Glickstein, his attorneys, and filed in the said Court

a Notice of Appeal and return thereto from the judgment and order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Gus Angelos and ors., co-partners, &c., the respondents in said cause, afterwards appeared in said Court of Appeals by David L. Delman, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Louis B. Boudin
323 of counsel for the appellant, and submitted by counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

THEREFORE, it is considered that the said judgment be affirmed with costs as aforesaid.

324

And hereupon, as well the Notice of Appeal, and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and

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which record now remains in the said Supreme Court before the Justices thereof, etc.

JOHN LUDDEN
Clerk of the Court of Appeals
of the State of New York

COURT OF APPEALS, CLERK'S OFFICE
Albany, January 21, 1943

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto. 326

JOHN LUDDEN
(Seal) Clerk

No. 74382

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

I, MICHAEL B. MCHUGH, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, DO CERTIFY, That I have compared the preceding with the original Remittitur of Court of Appeals on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original 327

Indorsed Filed Feb. 18, 1943

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 26 day of Feb., 1943.

MICHAEL B. MCHUGH
(Seal) Clerk.

328

Clerk's Certificate.

No. 53

State of New York, County of Bronx, } ss.:

Gus Angelos and ors., Co-partners, etc.,
Respondents,

against

William Mesevich, Pres. of the Cafeteria Employees Union, etc.,
Appellants.

329 I, Michael B. McHugh, Clerk of the Supreme Court in and for said County, and Clerk of the Supreme Court of said State, and Clerk of the County Court, County of Bronx, do hereby certify that the foregoing consists of certified copies of the Notice of Appeal, Judgment Roll, Record on appeal and the remittitur dated January 21st, 1943 of the Court of Appeals, State of New York, on file in my office.

In Witness Whereof, I have hereunto set my hand and affixed my official (Seal) seal, this 17th day of March, A. D. 1943.

330 Michael B. McHugh
Clerk.

331

Certificate as to Opinion.

STATE OF NEW YORK
COURT OF APPEALS,
STATE REPORTER'S OFFICE } ss.:

I, E. J. DIMOCK, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Angeles v. Mesevich, decided by the Court of Appeals on the twenty-first day of January, 1943, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

332

IN WITNESS WHEREOF, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this eighth day of March, 1943.

(Seal)

E. J. DIMOCK
As Reporter of the Court of Appeals of the State of New York.

Attest:
L. S. JOHN LUDDEN
Clerk of the Court of Appeals.

333

STATE OF NEW YORK
COURT OF APPEALS. }

I, IRVING LEHMAN, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that John Ludden is the clerk of said court, having custody of the

seal of said court and of the decisions, minutes and records thereof, and that E. J. Dimock is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Angelos v. Mesevich, decided by the said Court of Appeals on the 21st day of January, 1943, is in due form and sufficient under the
335 laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of John Ludden, as clerk of said court, appended thereto is the true and genuine signature of said John Ludden, and the signature of E. J. Dimock, as reporter of said court, appended thereto is the true and genuine signature of said E. J. Dimock.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature at the Chambers of said court at the Court
336 of Appeals Hall, in the City of Albany and State of New York on the eighth day of March in the year one thousand nine hundred and forty-three.

IRVING LEHMAN
As Chief Judge of the Court of Appeals of the State of New York.

337

Opinion of Court of Appeals.

Gus Angelos et al., Copartners Trading under the Name of The World Cafeteria, Respondents, *v.* William Mesevich, Individually and as President of the Cafeteria Employees Union, Local 302, Appellants.

(Decided January 21, 1943.)

Appeal by defendants from a judgment of the Appellate Division, first department, which affirmed by a divided court a decree of the Supreme Court of the County of Bronx (Leary, J.) granting a permanent injunction. 338

Louis B. Boudin and *Irving R. Feinberg*, for appellants.

David L. Delman for respondents.

Rippey, J. After due trial of issues framed according to our practice, the Supreme Court, on the equity side, made findings of fact and conclusions of law upon which it granted a permanent injunction restraining and enjoining the defendants "from stationing pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business." Since the findings of fact were based upon sufficient evidence to support them, and the Appellate Division has affirmed the decree and made no new 339

findings of fact, the findings of fact made by the trial court are not open for review by the Court of Appeals (Civ. Pr. Act, § 605), nor are we permitted to make new and additonal findings of fact to form a basis to sustain the contention of the defendants. We must take the findings as made and determine the questions of law raised thereby.

The action was brought to restrain defendants from picketing plaintiffs' premises and business and from illegally interfering with and injuring that business. There is nothing within the allegations of the complaint which brings the action 341
within the provisions of section 876-a of the Civil Practice Act of this State. For that reason, among others, defendants contend that the judgment below must be set aside. The primary and principal issue litigated at the trial as raised by the answer was whether a "labor dispute" existed between the parties within the meaning, purpose and intendment of that act as construed by our State courts. to support defendants' contention, they argue that a labor dispute existed between the plaintiff Loizides, who is claimed to have been operating a cafeteria at the location above specified with various non-union employees prior to April 22, 1939, and the defendants, and that such dispute held 342
over and continued between the plaintiffs in this action and the defendants subsequent to that date. There are no findings of fact to support any such contention. The facts as found show that the defendants established a picket line at and near the cafeteria on or about April 15, 1939. On April 22, 1939, the plaintiffs in this action formed a partnership in accordance with the provisions of

our partnership statute (Partnership Law, Cons. Laws ch. 39) and filed a certificate as required by law that it was conducting business at the place indicated as "The World Cafeteria." Subsequently this action was commenced. Defendants sought to show that the partnership was a fraud and sham and not a *bona fide* partnership, that only one individual owned and operated the business, and that the other plaintiffs were merely employees. Upon conflicting evidence it has been found as matters of fact, conclusively binding on this court, that the plaintiffs were partners and, as such, sole owners and operators of the cafe- 344
teria, that the partnership was a valid partnership, and that plaintiffs as members of the partnership did all the work in connection with said cafeteria without any outside assistance. The trial court refused to find as requested by defendants, that the partnership was a fictitious arrangement among the plaintiffs entered into solely for the purpose of avoiding the unionization of the World Cafeteria and of applying to the court for an injunction restraining the defendant union from picketing the cafeteria, and that refusal to find has necessarily been approved by the lower court upon appeal. It has been specifically found that there was no "labor dispute" between the 345
plaintiffs and any employees, or between the plaintiffs and the defendants, within the purview of section 876-a of the Civil Practice Act, that no employee of the plaintiffs ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs, and that no strike has ever been called at the plaintiffs' place of business. The mere fact that no strike has been

called does not make the picketing unlawful. (*Exchange Bakery & Restaurant, Inc.* v. *Rifkin*, 245 N. Y. 260, 263.) Nevertheless, there can be no labor dispute within the meaning of section 876-a unless there is employment. (*Baillis* v. *Fuchs*, 283 N. Y. 133, 137.) Upon the facts as found in this case, the partnership comes within the reasoning of and is controlled by the decision in *Thompson* v. *Boekhout* (273 N. Y. 390). The partnership was not a legal entity in the sense that its members were employees as in the case of a corporation. (*Borough Park Sanitary Live Poul-*
347 *try Market, Inc.* v. *Heller*, 280 N. Y. 481.) The findings in this case give us no information as to whether the objective of the defendants was proscribed as in *Opera on Tour, Inc.* v. *Weber* (285 N. Y. 348) or lawful as in *Wohl* v. *Bakery & Pastry Drivers & Helpers Local 802* (284 N. Y. 788, rev., 315 U. S. 769). Had the court found, as requested by the defendants, that the partnership was formed to avoid the establishment of a picket line with men walking up and down in front of the place, it would not have changed the result. (Cf. *Jenkins* v. *Moyse*, 254 N. Y. 319.) Accordingly, the action rests upon the principles of the common law without preliminary compli-
348 ance with the provisions of section 876-a of the Civil Practice Act required.

It has been found by the lower courts that the picketing of the World Cafeteria was at all times orderly and peaceful and that no acts of violence had been threatened or committed by the defendant union. The defendants had the constitutional right accurately and truthfully and without violence, force or coercion, or conduct other-

wise unlawful or oppressive to make their grievances known to the public. (*Wohl* v. *Bakery & Pastry Drivers & Helpers Local 802, supra.*) But a citizen is not required to tolerate peaceful picketing accompanied by untruthful representations, interference with his business or coercive conduct designed to injure or destroy his business whether a labor dispute exists or not. (*Busch Jewelry Co.* v. *United Retail Employees' Union*, 281 N. Y. 150; *Wohl* v. *Bakery & Pastry Drivers' & Helpers Local 802, supra.*) Unlike the record in the *Wohl* case, there are findings of fact here to sustain the decree. In this case it has been 350
found that individuals under the control of the defendants have been picketing the plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor and that the pickets were previously employed by the plaintiffs, which representations were false and known by the defendants to be false, since there were no employees at the place of business of the plaintiffs and the plaintiffs were not unfair to organized labor; that such pickets approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food, and that by patronizing said restaurant they were aiding the cause of Fascism; and that the pickets 351
directed customers about to enter the plaintiffs' place of business to a cafeteria across the street which was a competitor of the plaintiffs. By no authoritative decision has it been held that such conduct is not subject to judicial restraint. On the contrary, unlawful and coercive conduct will be enjoined where it has been found that such

conduct has caused damage and will cause irreparable damage if permitted to continue and the party who is so damaged or threatened to be damaged has no adequate remedy at law. (*Busch Jewelry Co.* v. *United Retail Employees' Union, supra,* p. 156.)

No exceptions appear in the record which raise any other question of law open for our further consideration.

The judgment should be affirmed, with costs.

DESMOND, J. (dissenting). The judgment should be reversed and the complaint dismissed. The 353 issuance of an injunction in a case like this is positively forbidden by section 876-a of our Civil Practice Act, by the decisions of this court and by the decisions of the United States Supreme Court construing the free speech guaranty of the Constitution of the United States.

Plaintiff Loizides owned a restaurant. The other six plaintiffs were his employees. Defendant union tried to negotiate a collective bargaining agreement with owner Loizides. Loizides refused to negotiate. Beyond any doubt there was then and there a labor dispute. The union, believing—and surely not being without good reason for that belief—that it had a settled and 354 absolute right to advertise to the public the grievance it claimed to have, began to picket the restaurant. The "picket line" consisted of *just one picket.* The Trial Justice has specifically found that the one-man picketing "was at all times orderly and peaceful," that "no acts of violence have been threatened or committed by the defendant union," that "the picket on the

picket line * * * requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations." It the picketing described in those findings, herein quoted verbatim, is unlawful, then picketing has been absolutely and completely outlawed in this State.

Owner Loizides, for the express and admitted purpose of removing the one-man picket line from in front of his restaurant, called together his six employees and with them signed a document which made them all his partners. Having thus completely changed the aspect of his enterprise, 356
Loizides, with all his newly-minted partners joined as co-suitors, demanded of the court of equity that defendants be forthwith and forever enjoined from picketing the cafeteria. Section 876-a troubled Loizides not at all. He and his erstwhile workers, he explained to the court, were now co-equals and co-proprietors, and so, he argued, there could not be any "labor dispute" between the plaintiffs and the defendant union. Any "labor dispute" there might have been in the pre-partnership days, plaintiffs told the court, came to a full and final stop when the six employees, without leaving their posts or doffing their uniforms, assumed the roles of partners. Through such a 357
device and on such an argument has the owner of this restaurant secured an injunction which in so many words prohibits any picketing of any kind whatever. No such injunction can be countenanced by this court. To affirm that injunction we must hold that this is not "a case growing out of a labor dispute." (Civ. Pr. Act, § 876-a.) Such a holding is impossible. Whether we take the

allegations of the complaint, the admitted facts, the trial court's findings or any or all of them, the complaint must be dismissed.

True, there are no findings that the dispute which concededly existed before the picketing began on April fifteenth and concededly continued until the partnership agreement was signed, held over and continued after the partnership had sprung into being on April twenty-second. But Loizides himself testified that he adopted the partnership plan to stop the picketing. What finding was necessary after that frank admission?
359 There is no dispute of fact here. The injunction depends solely on an impossible construction of the law.

We are told that this action rests not on section 876-a, but on the principles of the common law. There is no point in reviewing the numerous decisions of this court in recent years denying the power to issue injunctions against peaceful, orderly picketing without threats or intimidation in *bona fide* labor disputes. Any common law of this State holding to the contrary must date back before *Exchange Bakery & Restaurant, Inc.* v. *Rifkin* (245 N. Y. 260), *Stillwell Theatre, Inc.* v. *Kaplan* (259 N. Y. 405) or *J. H. & S. Theatres, Inc.* v. *Fay* (260 N. Y. 315), all of which cases antedate
360 the enactment of section 876-a and all of which are positive in their affirmations of the right to picket peacefully.

Even if this injunction were not unlawful under section 876-a and under our decisions, early and late, even if there were no labor dispute and no case growing out of a labor dispute, this ban against peaceful picketing would still be violative

of the Federal Bill of Rights. Most plainly is this pointed out in *Bakery & Pastry Drivers & Helpers Local 802* v. *Wohl* (315 U. S. 769), where the Supreme Court noted (p. 774) that the New York courts had seemed to assume that the legality of the injunction followed from a determination that a labor dispute was not involved. "Of course," said the Supreme Court "that does not follow: one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or 362
oppressive." (See, also, *Thornhill* v. *Alabama*, 310 U. S. 88, 100; *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, 296-298; *American Federation of Labor* v. *Swing*, 312 U. S. 321.) Nothing is now better settled than that picketing is an exercise of the constitutional right of free speech, that it needs no authorization from the State, which may in proper case regulate picketing, but may never forbid it.

The Supreme Court decisions just cited make it unnecessary to deal extensively with *Thompson* v. *Boekhout* (273 N. Y. 390), wherein this court declared the absence of a labor dispute in a case where the owner of a small business decided to 363
run it without any employees at all. The constitutional question was not there raised. Incidentally, this court later made plain that the *Thompson* v. *Boekhout* ruling was to be limited to its special facts, for in *Boro Park S. L. P. Market, Inc.* v. *Heller* (280 N. Y. 481) this court decided that a labor dispute did exist with defendant union though all those employed in plaintiff's

business were stockholders of plaintiff corporation. Here Loizides did not discharge his employees and thereafter do all the work himself. He conferred a new status on their labors by drawing up a partnership agreement, which, while "valid" as the court held, was nevertheless a device (see *Matter of Scott* v. *Miller*, 285 N. Y. 760) to keep out the union while retaining the same services of the same workers as "partners."

We have not overlooked findings of fact numbered Fourth and Tenth. The first of these charges the picket with "bearing false and mis-
365 leading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs." Actually the picketing signs said nothing about a strike or a previous employment; they simply announced (according to plaintiff Loizides): "This place is unfair to organized labor, please help us." Such statements cannot be enjoined. (*Wilner* v. *Bless*, 243 N. Y. 544; *Yann* v. *Raimist*, 255 N. Y. 307.) The Tenth finding is that the picket told prospective customers of the cafeteria that the cafeteria served bad food and that by patronizing it cus-
366 tomers "were aiding the cause of Fascism." But there is another finding (Twenty-third) above referred to, which states positively that the picket "requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations." The Tenth and Twenty-third findings are obviously irreconcilable and, applying as we must the settled rule that, where there are conflicting findings,

appellants get the benefit of the findings most favorable to them, we ignore the Tenth finding. Of course, even were that finding binding on us, the complaint would still have to be dismissed for non-compliance with section 876-a.

In this small lawsuit there is at hazard, just as surely as in great strifes that sweep the world, an ancient and inalienable right. If that right cannot find vindication in the courts, it has little chance elsewhere.

The judgment should be reversed, and the complaint dismissed, with costs.

368 FINCH, LEWIS and CONWAY, JJ., concur with RIPPEY, J., DESMOND, J., dissents in opinion in which LEHMAN, Ch. J., and LOUGHRAN, J., concur.

Judgment affirmed.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—June 14, 1943

On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

369 A petition for rehearing having been filed in this case upon the denial of a petition for writ of certiorari;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

It is further ordered that the order denying certiorari be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.